

- 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;

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.

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

Note to 2016 Amendments

The Rule has been amended by adding subsection (B) which provides that motions (other than motions to dismiss or motions to be relieved as counsel) do not stay the time limits imposed by these Rules for filing the record on appeal and briefs. For those motions which do stay the time limits, the time frames for perfecting the appeal resume from the date of the order deciding the motion. The subsection is based upon SCACR 240(b).

- 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.

2016 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. The administrative law judge may order the agency to prepare a transcript in the event the agency fails to do so. However, any order issued by the court does not relieve the appellant of the obligation to pay for the preparation of the transcript.

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.
- 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.
- 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.

2014 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 electronic 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 compliance with Rule 6(B) regarding privacy protection. The format of the Record on Appeal is similar to that used in the South Carolina Appellate Court Rules. The administrative law judge's review is limited to those facts appearing in the record. For appeals involving the Department of Employment and Workforce (DEW), a shorter time frame for the filing and service of the Record on Appeal applies. The shorter time frame is designed to expedite the resolution of DEW appeals in accordance with S.C. Code Ann. § 41-35-750, which provides that these appeals must be heard in a summary manner.

37. Briefs.

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

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. Briefs are not required to be bound. The original and one copy of each brief must be filed with the Court, and proof of service of the brief on all parties of record must be included. 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.

Notes to 2016 Amendments

This Rule has been amended by adding subsection (E), which provides for the filing of amicus curiae briefs. The presiding administrative law judge must request the filing of amicus briefs or must grant leave to file them. The subsection is based upon SCACR 223.

- 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.

2014 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. 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.