

**Proposed 2016 Amendments
ALC Rules of Procedure**

Add a sentence to Rule 1 specifying the citation form for the ALC Rules of Procedure:

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 ____.”

Add a provision to Rule 8(A) which clarifies that entities other than natural persons must be represented by attorneys in proceedings before the Court:

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. 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.

Amend Rule 21(A) to change the triggering date for the discovery timeline to 90 days from the date of the Notice of Assignment and to delete an obsolete reference to “Request for Information”:

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, SCRCF, except that only the standard interrogatories provided by SCRCF 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, SCRCF; and no more than ten (10) requests to admit per party, including subparts under Rule 36, SCRCF. All discovery shall be completed within 90 days of the ~~receipt date~~ date 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.

Add a subsection to Rule 34 concerning the effect of motions on the time frames for perfecting appeals (such as is presently contained in SCACR 240(b)):

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.

Add subsection (E) to Rule 37, which provides for the filing of amicus curiae briefs and which is based on SCACR 213:

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.

Add provisions to Rules 59 and 60 which state that motions for extensions of time to file the record on appeal and the briefs in inmate appeals will only be granted in exceptional circumstances:

- 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.

60. Briefs.

- A. Time for Filing Briefs.** Unless otherwise ordered or stayed by the operation of Rule 59, the party first noticing the appeal shall file an original brief within ninety (90) days after the date of assignment. Within one hundred ten (110) days after the date of assignment, the respondent shall file an original brief in response. A reply brief may be filed within one hundred twenty (120) days after the date of assignment. The principal briefs shall not exceed ten (10) pages and the reply brief shall not exceed five (5) pages. 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.

Amend Rule 71(C) to provide a uniform \$50 filing fee for all Department of Natural Resources cases:

71. Filing Fee.

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

Case Type	Fee
Dept. of Corrections (4th and subsequent filing per calendar year)	\$25
DHEC--Health Licensing	\$200
DHEC--Individual Septic Tanks	\$100

DHEC–(All other, including OCRM, CON and NAD)	\$500
Dept. of Health and Human Services (Provider Appeals)	\$150
Dept. of Health and Human Services (All Other Cases)	\$25
Dept. of Insurance–Rate Cases	\$350
Dept. of Insurance–Agent Application	\$200
Dept. of Insurance–Agent Disciplinary	\$200
Dept. of Insurance–All Other	\$200
LLR– Wage Disputes (Department of Labor)	\$50
LLR– Appeals (Professional and Occupational Licensing Boards)	\$200
Dept. of Natural Resources– 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
PEBA (Retirement, EIP)	\$50
SLED	\$100
Setoff Debt Collection Act	\$50
Requests for Injunctive Relief	\$200
Other Contested Cases and Appeals (including cases from agencies not listed herein)	\$150