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Feb 19 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATION LAW COURT

Hon. S. Phillip Lenski, Administrative Law Judge

Case No. 2024-002073

Anthony Crosby, Appellant,

v.

South Carolina Criminal Justice Academy, Respondent.

MOTION TO DISMISS

I, James M. Fennell, General Counsel of the South Carolina Criminal Justice Academy (Respondent), respectfully request, pursuant to Rule 240, SCACR that this appeal be dismissed due to Appellant's failure to comply with Rule 40(B), SCALC, which required Appellant to file a motion for rehearing with the ALC prior to filing a Notice of Appeal.

Rules 33 – 41, SCALC govern cases on appeal to the ALC from Final Agency Decision from certain agencies; Respondent is one such agency, and these rules are binding on this case. Therefore, Appellant must comply with all the above rules in order to perfect his appeal.

Rule 40(B), SCALC states: “Prior to filing a Notice of Appeal from the decision of an administrative law judge, a party must file a motion for rehearing stating

with particularity the points supposed to have been overlooked or misapprehended by the court. A motion for rehearing must be filed within ten days of receipt of the order. The opposing party may file a response to the motion within ten (10) days of the filing of the motion. The time for appeal is stayed by a timely motion for rehearing and runs from receipt of an order granting or denying the motion.”¹ (emphasis added)

The ALC Order in this case was filed on November 6, 2024. In Appellant’s initial brief, he states “On November 6, 2024, the Hon. S. Phillip Lenski summarily adopted the LETC’s factual findings and conclusions, and affirmed the LETC”s decision to deny recertification. The Appellant filed his Notice of Appeal from Judge Lenski’s decision to this court on November 26, 2024. Appellant admits in his initial brief that he failed to comply with Rule 40(B), SCALC. Additionally, Appellant did not add an ALC motion to reconsider, pursuant to Rule 40(B), SCALC to his designation of matter to be included in the record on appeal, because the motion was never filed.

In the present case, Appellant failed to file a motion to reconsider pursuant to Rule 40(B), SCALC. As such, Appellant has failed to properly perfect his appeal, which Respondent believes is not properly before this Court and Respondent requests that this appeal be dismissed with prejudice.

Respondent asks that the filing fee be waived pursuant to Rule 240 (d, SCACR), as Respondent is a state agency.

¹ It should be noted that this rule was amended in 2021 (three years prior to this ALC final order and appeal) and specifically states, in part, “The 2021 amendment changed the rule to require a motion for rehearing as a prerequisite to filing a notice of appeal from the administrative law judge’s decision.”

/s/ James M. Fennell

James M. Fennell

General Counsel

SC Criminal Justice Academy

5400 Broad River Road

Columbia, SC 29210

Bar # 72576

jfennell@sccja.sc.gov

803-896-7722

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PROOF OF SERVICE

I, James M. Fennel, counsel for Respondent, hereby certify that service of the Motion to Dismiss in the above captioned matter was made, pursuant to Supreme Court Order Dated April 242, 2024, upon all counsel via email only to oleary_email@yahoo.com this 19th day of February, 2025.

John A. O'Leary, Esquire
Attorney for Appellant
oleary_email@yahoo.com
O'Leary Associates, P.A.
714 Calhoun Street
Columbia, SC 29201

/s/ James M. Fennell
James M. Fennell
General Counsel
SC Criminal Justice Academy
5400 Broad River Road
Columbia, SC 29210
Bar # 72576
jfennell@sccja.sc.gov
803-896-7722

February 19, 2025



South Carolina Criminal Justice Academy

February 19, 2025

The Honorable Jenny Abbott Kitchings
Clerk of court, S.C. Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Anthony Crosby v. South Carolina Criminal Justice Academy
Appellate Case No. 2024-002073
Motion Substitute Counsel

Dear Ms. Kitchings:

Please find attached Respondent's Motion to Dismiss and Proof of Service.

Thank you for your consideration of this matter. If you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

/s/ James M. Fennell
James M. Fennell
General Counsel

cc: John A. O'Leary, Esquire
Attorney for Appellant
oleary_email@yahoo.com
O'Leary Associates, P.A. 714 Calhoun Street Columbia, SC 2920



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5400 BROAD RIVER ROAD/COLUMBIA, SOUTH CAROLINA 29212-3540/ PHONE: (803)896-7777/ FAX: (803)896-7776

