

STATE OF SOUTH CAROLINA)
)
)
James Edward Johnson Jr., 353643)
)
Appellant,)
)
v.)
)
SOUTH CAROLINA)
DEPARTMENT OF)
CORRECTIONS,)
)
Respondent.)
)
)

IN THE SOUTH CAROLINA COURT OF
APPEALS

RECEIVED

APPELLATE CASE NO.:

JUL 17 2025

S.C. SUPREME COURT

NOTICE OF APPEAL

FROM THE ADMINISTRATIVE LAW
COURT

ALC DOCKET NO.: 24-ALJ-04-0618-AP

I. Notice of Appeal

NOTICE IS HEREBY GIVEN that James Edward Johnson, Jr., Appellant above-named, appeals to the South Carolina Court of Appeals from the Order of Dismissal issued by The Honorable Robert L. Reibold, Administrative Law Court Judge, dated May 29, 2025 (hereinafter "Order of Dismissal"), in the above-entitled action. Appellant received a copy of the Order of Dismissal on June 4, 2025. A copy of the Order of Dismissal is attached hereto as Exhibit A.

II. Order Appealed From

The Order of Dismissal dismissed Appellant's submissions, including a response to the Respondent's motion to dismiss, motion for summary judgment, and a motion to amend. The Administrative Law Court deemed these documents to lack the required original signature pursuant to South Carolina Administrative Law Court Rule 6A, finding that the signature of Appellant's attorney-in-fact constituted the unauthorized practice of law under S.C. Code Ann. § 40-5-310 and ALC Rule 8A. As a direct result of this dismissal, the Respondent's motion to dismiss was heard and considered by the Administrative Law Court without the benefit of Appellant's intended response or amended filings being part of the record or considered on their merits.

III. Grounds for Appeal

Appellant appeals from the Order of Dismissal on the following grounds, among others, to be more fully set forth in Appellant's brief:

1. The Administrative Law Court erred in finding that the signature of Appellant's attorney-in-fact on Appellant's submissions constituted the unauthorized practice of law.

a. The Administrative Law Court failed to distinguish between the authority to institute an action and the authority to conduct the practice of law, as S.C. Code Ann. §§ 62-8-201 and 628-212 (1-9) explicitly grant an agent broad authority under a valid power of attorney to take legal steps, including instituting legal proceedings.

b. The Administrative Law Court incorrectly applied S.C. Code Ann. § 40-5-310 (Unauthorized Practice of Law) in this context. The Appellant asserts that the position of attorney-in-fact is a private endeavor and the attorney-in-fact's actions were in no way an attempt to practice or solicit legal services to the public.

c. The Administrative Law Court failed to acknowledge that the Administrative Law Court is not a "constitutional court," but rather a court of fact and an agency under the executive branch of state government (S.C. Code Ann. § 1-23-500; Trident Medical Center LLC v. South Carolina Department of Health and Environmental Control, 438 S.C. 391 (2015)). As such, the ALC is not a court of the public, and the rationale behind strict attorney licensing requirements to protect the general public from unauthorized legal practitioners is less directly applicable in this specific administrative context, where a private power of attorney governs.

2. The Administrative Law Court erred in dismissing Appellant's timely filed motions without a hearing, thereby violating Appellant's constitutional rights to due process and redress of grievances under the South Carolina Constitution as well as the United States Constitution, and violating the spirit of the South Carolina Civil Rules of Procedure.

a. The Appellant, due to incarceration in high security unit(s), faces an incapacity that severely limits access to necessary resources such as printers, computers, and word

processors, making it difficult to personally sign and timely file paperwork in accordance with the South Carolina Civil Rules of Procedure.

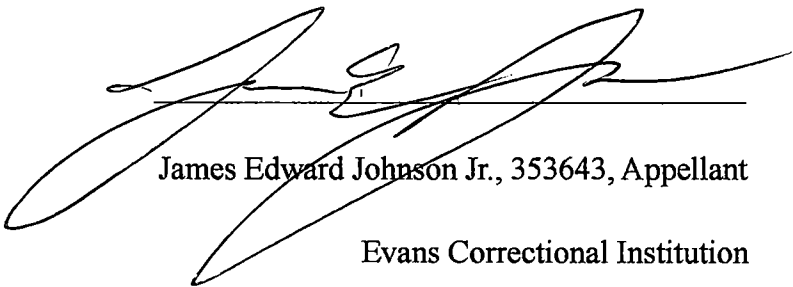
- b. The attorney-in-fact's role was limited to typing and formatting the Appellant's own arguments, which were not the attorney-in-fact's own legal advice or advocacy and thus did not constitute the practice of law.

IV. Relief Requested

Appellant respectfully requests that the South Carolina Court of Appeals reverse the Order of Dismissal dated May 29, 2025, and remand this matter to the Administrative Law Court for a hearing on the merits, with instructions to add and consider all timely motions submitted by Appellant to the record.

Dated this 7th day of July, 2025.

Respectfully submitted,



James Edward Johnson Jr., 353643, Appellant

Evans Correctional Institution
610 Highway 9 West
Bennettsville, SC 29512-2130

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

James Johnson, #353643

Appellant,

v.

South Carolina Department of Corrections,

Respondent.

Docket No. 24-ALJ-04-0618-AP

**ORDER GRANTING
MOTION TO DISMISS**

STATEMENT OF THE CASE

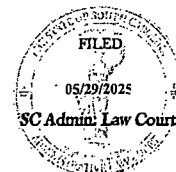
This matter is pending before the South Carolina Administrative Law Court (“ALC” or “Court”) pursuant to an appeal filed by James Johnson¹ (“Appellant”), an inmate housed with the South Carolina Department of Corrections (“Department”).

On August 25, 2024, Appellant submitted a Step 1 Grievance complaining about the Department’s grooming policy. Specifically, he complained that men were required to have shaven heads while women were not. Appellant comments that “[t]his unequal treatment is intentional and/or purposeful sexually discriminatory and serves no legitimate penological interest. This policy also is a violation of the equal protection clause of the 14th amendment of the constitution of the U.S. and similar State laws.” His requested action was that the “male grooming policy be revised so it would be equal to the female policy. Allowing male inmates permission to grow head hair more than one inch and similar hairstyles.” The Warden denied the Step 1 Grievance on July 5, 2024 and Appellant received the decision the same day.

Appellant filed a Step 2 Grievance on July 5, 2024, restating his grievance as follows:

SCDC policy OP-22.13(1.1, 1.1.1, 1.2) are clear violations of SC 24-13-10, Article 1 section 19, and Article 8 of the US constitution, equal protections clause of the 14th amendment of the US constitution, as well as ACA/CAC standards (see OP-22.15) in that the separate grooming policy for male / female inmates is unequal, intentional and/or purposeful sexually discriminatory, and serves no legitimate penological interest. Any staff performing the forementioned conduct (see kiosk#24-03539700) is also in violation. I once again request the appropriate official to amend said

¹ The Court noted the original caption contained an incorrect inmate number for Appellant. Accordingly, the caption has been amended here to reflect the correct inmate number.



policy to allow both male / female policy to be the least obstructive for both inmates.

The Responsible Official denied the Step 2 Grievance on August 7, 2024, explaining in part that “[p]olicy revisions may be requested by SCDC Administrators, inmates are not authorized to request the same.” Appellant received that decision on August 26, 2024

On September 11, 2024, Appellant filed a Notice of Appeal. The Department filed a motion to dismiss on November 12, 2024. It argues that Appellant’s underlying grievance does not implicate a state-created liberty interest, and that dismissal is therefore appropriate pursuant to *Slezak v. South Carolina Department of Corrections*, 361 S.C. 327, 605 S.E.2d 506 (2004).

On November 27, 2024, the Court received two documents, one purporting to be a “Response to Motion to Dismiss / Motion for Summary Judgment” and one purporting to be a motion to amend. On December 2, 2024, the Court received yet another motion from the Appellant. These documents were not initially processed because they were deemed to lack the required signature. *See* SCALC Rule 6(A) (“all documents filed with the Court shall be signed with an original signature”). While a signature appears in the signature block of these submission, the signature block reads ““(signed by Karissa Ochs, PoA, AiF).” The certificates of service accompanying these materials were also signed as follows” “Karissa M. Ochs (PoA, AiF for James E. Johnson, Jr.)” These signatures are neither the original signature of Appellant nor are they the signature of legal counsel. To date, no attorney has filed a notice of appearance in this matter on behalf of Appellant.

The Court contacted Appellant by letter regarding the deficiency. The Court subsequently received correspondence from Appellant dated May 15, 2025, in which Appellant argues that the individual who signed written submissions on his behalf holds his power of attorney. Appellant argues that pursuant to S.C. Code Sections 62-8-212(1), (2), (3), (4), (5), and (6), the holder of his power of attorney is legally authorized to take legal steps such as bringing an action or seeking an injunction. Appellant therefore asserts that his attorney in fact is authorized to sign motions and other papers in this proceeding, and that the Court should accept the filings he has submitted.

Appellant’s argument fails to distinguish between the authority to institute an action and authority to conduct the practice of law. While a power of attorney authorizes an attorney-in-fact to take actions such as instituting legal proceedings, it does not authorize a non-lawyer to act as a lawyer. To do so would be to permit an end run around the requirement that attorneys be

licensed to protect the public. Accordingly, an attorney-in-fact who signs legal pleadings pursuant to a power of attorney may commit the unauthorized practice of law. *See, e.g., Johns v. County of San Diego*, 114 F.3d 874, 876 (9th Cir. 1997); *Weber v. Garza*, 570 F.2d 511, 514 (5th Cir. 1978); *Securities & Exch. Comm'n v. White*, No. 8:11-944-HMH-KFM, 2011 WL 1544202, at *3-4 (D.S.C. Apr.22, 2011) (noting that even if family member holds power of attorney for party, non-lawyer cannot represent pro se party without violating law regarding unauthorized practice of law)*Christiansen v. Melinda*, 857 P.2d 345, 346-49 (Alaska 1993); *Jones v. Brooks*, 97 A.3d 97, 103-04 (D.C. 2014); *In re Conservatorship of Riebel*, 625 N.W.2d 480, 481-83 (Minn. 2001); *Eby v. Johnston L. Off., P.C.*, 138 Nev. 660, 669, 518 P.3d 517, 526 (Nev. App. 2022) (inmate purported to authorize a non-lawyer to litigate a civil suit on his behalf by virtue of a power of attorney); *Fravel v. Stark Cty. Bd. of Revision*, 575, 728 N.E.2d 393, 394 (Ohio 2000) (non-attorney operating under a power of attorney engages in the unauthorized practice law when he prepares and files a complaint with a board of revision on behalf of a taxpayer); *Kohlman v. W. Pa. Hosp.*, 652 A.2d 849, 850-52 (Pa. Super. Ct. 1994); *see also* SCALC Rule 8(A); *accord* S.C. Code Ann. § 40-5-310 (2011) (“No person may practice or solicit the cause of another in a court of this State unless he has been admitted and sworn as an attorney.”)

The Court therefore concludes that Appellant’s submissions may not be considered, and the Department’s motion is presently before the Court.

DISCUSSION

The Court generally has jurisdiction to hear inmate appeals that have been properly filed and served. *See* S.C. Code Ann. § 1-23-600(D) (Supp. 2024); *Allen v. S.C. Dep't of Corr.*, 439 S.C. 164, 170, 886 S.E.2d 671, 674 (2023) (“[T]he ALC has subject matter jurisdiction over inmate grievance appeals that have been properly filed.”); *Slezak v. S.C. Dep't of Corr.*, 361 S.C. 327, 331 605 S.E.2d 506, 507 (2004); *Al-Shabazz v. State*, 338 S.C. 354, 369, 527 S.E.2d 742, 750 (2000).

However, the Court may summarily dismiss an inmate's appeal when the appeal does not implicate “state-created” liberty or property interests. *See Slezak*, 361 S.C. at 331, 605 S.E.2d at 507 (explaining summary dismissal is appropriate when “the inmate's grievance does not implicate a state-created liberty or property interest”); *id.* (explaining the Due Process Clause is only offended when an inmate is subjected to “atypical and significant hardships in relation to ordinary incidents of prison life” (citing *Sandin v. Conner*, 515 U.S. 472, 484 (1995))); *Skipper v. S.C. Dept.*

of *Corr.*, 370 S.C. 267, 272-74, 633 S.E.2d 910, 913-14 (Ct. App. 2006). "Courts traditionally have adopted a 'hands off' doctrine regarding judicial involvement in prison disciplinary procedures and other internal prison matters, although they must intercede when infringements complained of by an inmate reach constitutional dimensions." *Al-Shabazz*, 338 S.C. at 382, 527 S.E.2d at 757. The Department argues that no state-created liberty or property interest is affected by the Department's decision.

An inmate claiming a protected interest must have a legitimate claim of entitlement to it. *Allen v. S.C. Dept. of Corr.*, 434 S.C. 114, 118–19, 862 S.E.2d 268, 270 (Ct. App. 2021), *reh'g denied* (Sept. 8, 2021), *cert. granted* (Apr. 5, 2023), *aff'd as modified*, 439 S.C. 164, 886 S.E.2d 671 (2023). Protected liberty interests can arise from two main sources: (1) the Constitution can create a liberty interest when a condition or restraint is so egregious as to implicate the Due Process Clause itself, or (2) state law or department policy can establish a protectible liberty interest. *Bazzetta v. McGinnis*, 430 F.3d 795, 801 (6th Cir. 2005); *Allen*, 434 S.C. at 118-19, 862 S.E.2d at 270-71. South Carolina courts, however, have emphasized that the focus of the Administrative Law Court should fall on the second category – state-created liberty or property rights. *See, e.g., Allen*, 439 S.C. at 171, 886 S.E.2d at 674 (the Administrative Law Court may summarily dismiss “an inmate’s grievance it does not implicate a *state-created* liberty or property interest sufficient to trigger procedural due process protection”) (emphasis added); *Skipper*, 370 S.C. at 279, 633 S.E.2d at 917 (“ALC should have dismissed [inmate’s] appeal given his grievance did not implicate a *state-created* liberty interest”) (emphasis added). State-created liberty interests are generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless impose atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life. *Sandin*, 515 U.S. at 484.

To assess whether a liberty interest is created under these circumstances, courts must engage in factual inquiry. *Miller v. Selsky*, 111 F.3d 7, 9 (2d Cir.1997); *see, e.g., Wright v. Coughlin*, 132 F.3d 133, 137 (2nd Cir.1998); *Sealey v. Giltner*, 116 F.3d 47, 52 (2nd Cir.1997) (noting the “desirability of fact-finding before determining whether a prisoner has a liberty interest in remaining free from segregated confinement”); *Brooks v. DiFasi*, 112 F.3d 46 (2nd Cir.1997); *Wright v. Miller*, 973 F.Supp. 390, 394 (S.D.N.Y.1997) (“district courts are required to make

factual findings with respect to the conditions of confinement at issue in each case”); *Williams v. Keane*, No. 95 Civ. 0379, 1997 WL 527677 at 5–6 (S.D.N.Y. Aug.25, 1997) (Peck, M.J.).

Here, Appellant alleges that the Department’s grooming policy is unlawful sexual discrimination and should be revised to treat male and female inmates the same. If Appellant’s grievance is viewed as a request to compel the Department to change its policy, the grievance does not implicate a state-created liberty or property interest. Appellant has not pointed the Court to any state statute, regulation, or mandatory Department policy which would entitle him to demand the relief requested. Given that Appellant is relying on Department policies, the Court takes note that the Department’s policy GA-01.01 Policies, Publications, and Forms (Feb. 1, 2022) provides in section 8.3 that “*Employees may submit recommended changes to the Responsible Authority over said policy.*” (emphasis added). Even under this policy, employees can only make recommendations for consideration and it does not appear inmates can insist on modification of policy.²

Because the Court concludes that Appellant’s claim does not implicate a state-created interest, summary dismissal is appropriate.³

ORDER

IT IS THEREFORE ORDERED that the Department's motion is **GRANTED** and this appeal is **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.



The Honorable Robert L. Reibold
Administrative Law Judge

May 29, 2025
Columbia, South Carolina

² If Appellant’s grievance is viewed as a request to declare the Department’s policy unconstitutional, then the Court lacks the power to grant Appellant’s request. The Court does not have authority to rule on facial challenges to constitutionality. *See e.g., Video Gaming Consultants, Inc. v. S.C. Dep’t of Rev.*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000) (“ALJs have no authority to pass upon the constitutionality of a statute”); *Dorman v. Dep’t of Health and Envtl. Control*, 350 S.C. 159, 171, 565 S.E.2d 119, 126 (Ct. App. 2002) (“ALJs cannot rule on a facial challenge to the constitutionality of a regulation or statute).

³ The Court renders no opinion on the validity or invalidity of any claims Appellant may possess under *federal* law. However, our courts have indicated that the Administrative Law Court should address only those interests which are created by state law or policy.

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on this date served this order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



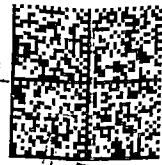
Jared Thompson
Judicial Law Clerk

May 29, 2025
Columbia, South Carolina

STATE OF SOUTH CAROLINA
Administrative Law Court
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COLUMBIA, SOUTH CAROLINA 29201

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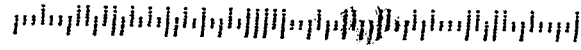
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James Johnson, #353643
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386 Redemption Way
McCormick, SC 29899

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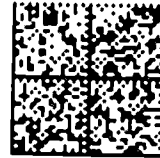
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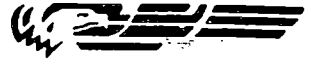
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