

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Robert L. Reibold, Administrative Law Judge

Case No. 2025-001423

James Edward Johnson, Jr. #353643,

Appellant

v.

South Carolina Department of Corrections,

Respondent.

INITIAL BRIEF OF APPELLANT

James Edward Johnson, Jr., SCDC #353643

Evans Correctional Institution

610 Highway 9 West

Bennettsville, SC 29512

Appellant, *Pro Se*

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STATEMENT OF ISSUES ON APPEAL

1. DID THE ADMINISTRATIVE LAW COURT ERR IN FINDING THAT THE SIGNATURE OF THE APPELLANT'S ATTORNEY-IN-FACT ON THE APPELLANT'S SUBMISSIONS CONSTITUTED THE UNAUTHORIZED PRACTICE OF LAW?
2. DID THE ADMINISTRATIVE LAW COURT ERR IN DISMISSING THE APPELLANT'S TIMELY-FILED MOTIONS WITHOUT A HEARING, THEREBY VIOLATING THE APPELLANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS AND REDRESS OF GRIEVANCES UNDER BOTH THE SOUTH CAROLINA AND UNITED STATES CONSTITUTIONS AS WELL AS VIOLATING THE SPIRIT OF THE SOUTH CAROLINA CIVIL RULES OF PROCEDURE?

STATEMENT OF THE CASE

On June 25, 2024, the Appellant submitted a Step 1 Grievance objecting to South Carolina Department of Correction's grooming policy. Specifically, he brought up concerns about the fact that men were required to have shaven heads while women were not. Appellant commented 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 concern. 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 to the Administrative Law Court (ALC). The Department filed a motion to dismiss on November 12, 2024. The motion to dismiss 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 ALC 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 ALC received a motion for injunction from the

Appellant. These documents were clock stamped initially; however, they were not processed because they were deemed to lack the required signature. The ALC cites in its order the following reason under SCALC Rule 6(A) (“all documents filed with the Court shall be signed with an original signature”). A signature appears in the signature block of these submissions, reading “James E. Johnson, Jr., #353643, Appellant (signed by Karissa Ochs, PoA, AiF).” No notice of appearance was ever filed by the attorney-in-fact nor did the attorney-in-fact ever appear on behalf of the Appellant.

The ALC contacted Appellant by letter regarding the matter. The ALC subsequently received correspondence from Appellant dated May 15, 2025, in which Appellant argued that the individual who signed written submissions on his behalf holds his power of attorney. Appellant argued that pursuant to S.C. Code Ann. 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 asserted that his attorney-in-fact is authorized to sign motions and other papers in this proceeding, and that the ALC should accept the filings he had submitted. The ALC decided that the Appellant's argument failed to distinguish between the authority to institute an action and authority to conduct the practice of law, stating that 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. The ALC therefore concluded that Appellant's submissions may not be considered, and the Department's motion to dismiss was heard without the Appellant's response to motion for dismissal, motion to amend, and motion for injunction to be heard before the ALC. The order of dismissal was signed May 29, 2025 and received by Appellant on June 4, 2025.

The Appellant filed a timely notice of appeal to the South Carolina Appeals Court on July 7, 2025. A copy of the notice was served on the ALC as well as the staff attorney for the respondent on the same date.

The South Carolina Appeals Court Clerk sent a letter dated September 4, 2025 to the Appellant with instructions to file an initial brief. The Appellant received this letter at the Evans Correctional Institution on September 10, 2025. The initial brief for the Appellant is as follows.

STANDARD OF REVIEW

The South Carolina Court of Appeals reviews a final decision of the ALC under a modified substantial evidence standard. S.C. Code Ann. § 1-23-380(A)(5); see also *Lark v. Bi-Lo, Inc.*, 276 S.C. 69, 71, 276 S.E.2d 304, 305 (1981). The Court will not reverse or modify the ALC's decision unless the findings are clearly erroneous in view of the substantial evidence on the whole record. *Id.* In applying this standard, the Court of Appeals will not substitute its own judgment for that of the ALC on questions of fact, but may reverse if the decision is affected by an error of law. See *Fendley v. S.C. Dep't of Health & Envtl. Control*, 384 S.C. 306, 310, 682 S.E.2d 509, 511 (Ct. App. 2009).

FACTS

I, James Edward Johnson, Jr., Appellant, wish to provide clarity regarding the limited, clerical role my attorney-in-fact played in preparing certain documents for my case. At the time of those filings, I was housed in a high-security unit. Due to the restrictive nature of that housing assignment, I had no access to essential resources such as a word processor, computer, or printer. This inability to properly prepare and format lengthy legal documents myself created a significant logistical barrier to meeting court deadlines.

To overcome this practical challenge, I requested that my attorney-in-fact act strictly as a scribe and administrative agent. See Appellant's Letter on Authority. Her role was explicitly and solely limited to:

- I. Transcribing my arguments: She took my dictated words and arguments – the content of which was entirely my own – and typed them out.
- II. Formatting the filings: She organized the text and formatted the documents for proper court submission.

At no point did I seek, nor did she provide, any legal advice or counsel concerning this matter. She did not create or modify my legal arguments, nor did she exercise any legal judgment on my behalf. The substance of every filing was wholly attributed to my direction and my own right to represent myself in court. Her assistance was purely ministerial, a necessary step to overcome the technical limitations of my past confinement.

ARGUMENTS

- I. THE ADMINISTRATIVE LAW COURT ERRED IN FINDING THAT THE SIGNATURE OF THE APPELLANT'S ATTORNEY-IN-FACT ON THE APPELLANT'S SUBMISSIONS CONSTITUTED THE UNAUTHORIZED PRACTICE OF LAW.

The finding that an attorney-in-fact engaged in the unauthorized practice of law (UPL) rests upon a fundamental misapplication of legal definitions. The Administrative Law Court (ALC) failed to distinguish between the limited agency created by a power of attorney and the specialized, licensed function of a practicing attorney.

Under the South Carolina Constitution, this [Supreme] Court has the duty to regulate the practice of law in South Carolina. See S.C. Constitution Article V, Section 4; *In re Unauthorized Practice of Law Rules*, 309 S.C. 304, 422 S.E.2d 123 (1992); see also S.C. Code Ann. § 40-5-10 (1986) (the Supreme Court has inherent power with respect to regulating the practice of law); see *State v. Buyers Service Co., Inc.*, 292 S.C. 426, 431, 357 S.E.2d 15, 18 (1987).

The practice of law is defined in legal precedent and scholarly sources, such as *Black's Law Dictionary*, as actions that require professional legal skill and judgment. It typically involves applying legal principles to a particular client's circumstances and representing that client in court or during a legal process.

Indeed, we have recognized "it is neither practicable nor wise" to attempt to formulate a comprehensive definition of what constitutes the practice of law. *Unauthorized Practice of Law Rules*, 309 S.C. 304, 305, 422 S.E.2d 123, 124 (1992). Because of this ambiguity, what is and what is not the UPL is best decided in the context of an actual case or controversy. See *id.* Moreover, it is this [Supreme] Court that has the final word on what constitutes the practice of law. See *Linder v. Ins. Claims Consultants, Inc.*, 560 SE 2d 612 (2002).

A. The Legal Definition of "Practice of Law" Is Distinct from the Agency of an "Attorney-in-Fact."

In contrast, an attorney-in-fact is a person who has been granted the authority to act on behalf of another person, known as the principal. This authority is limited by the terms of the power of attorney document. The attorney-in-fact is an agent, not a legal practitioner, and their actions are considered the actions of the principal.

The preparation of legal documents constitutes the practice of law when such preparation involves the giving of advice, consultation, explanation, or recommendations on matters of law. *State v. Despain*, 319 S.C. 317, 319, 460 S.E.2d 576, 578 (1995). Even the preparation of standard forms that require no creative drafting may constitute the practice of law if one acts as more than a mere scrivener. See *State v. Buyers Service Co.*, 292 S.C. 426, 430, 357 S.E.2d 15, 17 (1987).

We construe the role of “scrivener” in this context to mean someone who does nothing more than record verbatim what the decedent says. See *Franklin v. Chavis*, 640 SE 2d 873 - SC: Supreme Court 2007.

B. The Appellant’s Attorney-in-Fact Acted as an Agent, Not a Legal Practitioner.

The court’s finding that the administrative actions of my attorney-in-fact constituted the UPL rests upon a fundamental misapplication and conflation of distinct legal roles and authorities. My agent acted strictly as a fiduciary agent in a ministerial capacity to support my statutory right to proceed pro se.

i. My Right to Self-Representation Supersedes Claims of UPL

My ability to create and present my own arguments is a foundational legal right:

a. My Pro Se Right: As the Principal and a party to this action, I possess the express right to manage and prosecute my own cause, as affirmed by S.C. Code Ann. § 40-5-80. The contents and legal arguments in the documents filed are exclusively my own.

b. The Signature Requirement: My signature on the documents, as required for a litigant proceeding without a licensed attorney under SCRPC Rule 11(a), confirms that I assume

full responsibility for the contents. The act of my agent assisting with the typing and filing process is separate and distinct from the act of legal representation.

ii. The Agent's Authority is Restricted by Statute to Managerial Tasks

The South Carolina Uniform Power of Attorney Act meticulously defines and limits the authority of an agent, thereby providing the clear boundary my agent respected:

a. Statutory Definition of an Agent (Attorney-in-Fact): Under S.C. Code Ann. § 62-8-102(1), my attorney-in-fact is an agent and a fiduciary, not a legal professional. My agent's sole duty, as mandated by S.C. Code Ann. § 62-8-114, was to act loyally and in accordance with my reasonable expectations. Providing legal advice or drafting arguments based on their own judgment would have constituted a breach of this fiduciary duty, as they are unlicensed.

b. Limitation by Extraordinary Powers: The law is so restrictive that S.C. Code Ann. § 62-8-201 requires an express grant of authority for specific, estate-affecting acts like making gifts or changing beneficiaries. My agent's act was the purely clerical task of transcription. I argue that if the law so carefully restricts a non-lawyer's power over property, it cannot implicitly allow them the unrestricted power over legal judgment and representation.

c. Authority in Claims and Litigation: Where my agent's actions pertain to this case, they are covered by the managerial authority granted under S.C. Code Ann. § 62-8-212, which covers the administrative and procedural tasks of initiating a claim and filing papers. Crucially, this same statute explicitly grants the agent the power to "Engage, compensate, and discharge attorneys."

This statutory language confirms the legislative intent: the agent's role is to hire the lawyer; the agent themselves is not the lawyer.

C. The Clerical Act Was Not the Practice of Law

The action in question was the use of an attorney-in-fact to mechanically produce documents containing my arguments, necessitated by my incarceration and limited access to resources. This was a ministerial act taken in compliance with the Uniform Power of Attorney Act to support my core constitutional rights. To deem this simple transcription and filing process as the unauthorized practice of law under S.C. Code Ann. § 40-5-310 is an error of law that creates an unwarranted and unduly harsh expansion of the UPL definition, penalizing me for merely utilizing a designated agent to assist my exercise of my pro se right.

Here, the record shows that the attorney-in-fact acted squarely within the scope of their granted authority. Their action of signing the appellant's submissions was a ministerial act of agency, not a display of legal judgment or a representation of the appellant's legal interests. The attorney-in-fact did not offer legal advice, interpret legal statutes, or argue a case. They merely executed a task as directed by the power of attorney.

S.C. Code Ann. § 40-5-310 states:

No person may practice or solicit the cause of another person in a court of this State unless he has been admitted and sworn as an attorney. A person who violates this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

Our Supreme Court has defined the practice of law to include the preparation and filing of legal documents involving the giving of advice, consultation, explanation, or recommendations on matters of law. *State v. Robinson*, 321 S.C. 286, 468 S.E.2d 290 (1996).

Because the actions of the attorney-in-fact do not meet the legal definition of practicing law, the ALC's ruling to the contrary was an error of law.

- II. 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.

The Administrative Law Court's (ALC) summary dismissal of my timely-filed motions without holding a hearing was a direct and fundamental violation of my right to due process, as guaranteed by the United States and South Carolina Constitutions.

A. The Administrative Law Court is Not an Article III Court

It is essential to recognize that the ALC is not a federal Article III Court, nor is it a constitutional court within the South Carolina judiciary. As established by state law, the ALC functions as an agency within the executive branch (S.C. Code Ann. § 1-23-500).

Because the ALC operates outside the formal structure of the judicial branch, its standard for procedural fairness should demand, at minimum, a process that ensures an incarcerated pro se litigant is not permanently denied their right to be heard over a mere

technicality. The ALC's rigid application of its rules to achieve a summary dismissal, despite the extenuating circumstances of my incarceration and the purely ministerial role of my agent, demonstrates an abuse of discretion that fails to meet even the lower standard of due process often afforded to administrative tribunals.

B. The Dismissal Denied My Fundamental Right to Be Heard

The denial of a hearing on timely-filed motions is a clear violation of due process and my right to redress of grievances (U.S. Constitution, 5th and 14th Amendments; S.C. Constitution, Article I, Section 3).

By summarily dismissing the motions based on the signature issue, the ALC:

i. Foreclosed Meaningful Review: The court effectively refused to consider my substantive claims and arguments, including my response to the defense's motion to dismiss, thus preventing me from being heard at a meaningful time and in a meaningful manner.

ii. Violated the Spirit of Procedure: This action circumvented the fundamental fairness principles embedded in the South Carolina Rules of Civil Procedure, whose purpose is to ensure the full and just resolution of disputes.

The court cannot allow a technicality regarding the purely clerical role of my agent to become a permanent, unreviewable denial of my fundamental right to a remedy. The ALC's error in dismissing my motions without a hearing must be reversed.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the Administrative Law Court.

Respectfully submitted,

October 7th, 2025

A handwritten signature in black ink, appearing to read "James E. Johnson, Jr.", written in a cursive style.

James Edward Johnson, Jr., SCDC #353643

Evans Correctional Institution

610 Highway 9 West

Bennettsville, SC 29512

Appellant, *Pro Se*

THE STATE OF SOUTH CAROLINA

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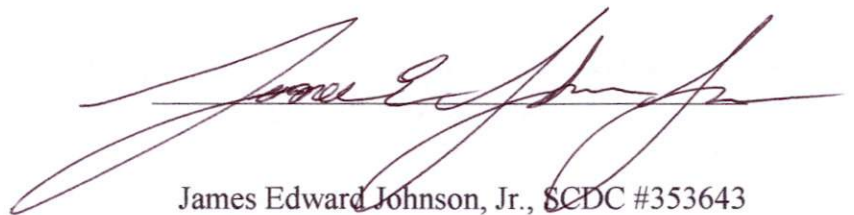
South Carolina Department of Corrections,

Respondent.

CERTIFICATE OF SERVICE

I, James Edward Johnson, Jr., Appellant, hereby certify that on Oct 7th 2025, a copy of the Initial Brief, Designation of Matter, and copy of Appellant's Power of Attorney was served upon the following parties by depositing said copy into the institutional mail system to be forwarded via U.S. Mail by an authorized institutional staff member, rather than directly myself:

Lauren Stevens, Staff Attorney
South Carolina Department of Corrections
P.O. Box 21787
Columbia, SC 29221-1787

A handwritten signature in black ink, appearing to read "James E. Johnson, Jr.", written over a horizontal line.

James Edward Johnson, Jr., SCDC #353643

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