STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Honorable Samuel L. Johnson, Administrative Law Judge

ALC Docket No. 25-ALJ-07-0420-CC
Appellate Case No.: 2026-001550

Robert Litzenberger, Appellant,

vs.

South Carolina Department of Environmental Services and Branden Baker, Respondents.

RESPONDENT'S RETURN TO APPELLANT'S MOTION AND CROSS-MOTION FOR DISMISSAL OF APPEAL ARISING FROM ALC DOCKET NO. 25-ALJ-07-0420-CC

Pursuant to Rule 240, SCACR,[1] Respondent, South Carolina Department of Environmental Services ("Department"), is filing this Return in opposition to Appellant, Robert Litzeberger's, Motion for Permission to Order Transcript Outside the Rule 207(b)(1) Deadline ("Motion for Extension of Time") filed on August 14, 2026. With this Return, the Department also hereby moves for an order of this Court directing the clerk of court to dismiss Appellant's appeal for failing to comply with the requirements of this Court's rules. Specifically, Appellant has failed to file a timely initial brief in accord with Rules 208(a)(1) and (4), SCACR, and has failed to file

[1] The acronym SCACR refers to the South Carolina Appellate Court Rules.

a copy of the South Carolina Administrative Law Court ("ALC") decision being challenged as required by Rule 203(d)(2)(B), SCACR.[2]

As discussed below, there is no factual basis for Appellant's motion as the ALC decided the Department's Motion for Summary Judgment on the pleadings. Since there was no hearing held before the ALC, there is no transcript to be ordered and there is no basis upon which the Court can grant Appellant's Motion for Extension for Time. Furthermore, given that there is no factual basis for Appellant to request a transcript, under Rule 208(a)(1), SCACR, Appellant was required to file his Initial Brief within thirty (30) days of the filing of his Notice of Appeal. Since Appellant failed to comply with this rule, the Department is entitled to an order of the Court directing the clerk of court to sign an order dismissing Appellant's appeal for failing to file a timely Initial Brief in accord with Rules 208(a)(4) and 260(a), SCACR. Finally, as indicated above, Appellant failed to perfect his appeal arising from ALC Docket No. 25-ALJ-07-0420-CC by including a copy of the Order Granting Motion for Summary Judgment in that matter.

FACTS

Proceedings before the Administrative Law Court

On June 22, 2026, the Department filed a Motion for Summary Judgment ("SJ Motion") with the ALC, based on the fact that there were no genuine material issues that needed to be

[2] Appellant has filed a Notice of Appeal for two separate ALC decisions: (1) the Order of Dismissal issued in ALC Docket No. 26-ALJ-07-0089-CC, pertaining to an onsite wastewater system (septic) permit, and (2) the Order Granting Motion for Summary Judgment issued in ALC Docket No. 25-ALJ-07-0420-CC, pertaining to a grant of stormwater permit coverage. Appellant has filed a copy of the Order of Dismissal, but not the Order Granting Motion for Summary Judgment. It appears this Court may have administratively processed these matters as a single appeal under Case No. 2026-001550; however, no order consolidating these matters has been issued. In his Motion for Extension of Time, Appellant indicated the motion concerned only the stormwater appeal arising from the order in ALC Docket No. 25-ALJ-07-0420-CC. Accordingly, the Department's instant return and cross-motion pertain only to the portion of the appeal arising from ALC Docket No. 25-ALJ-07-0420-CC.

determined at trial. Order Granting Motion for Summary Judgment, dated July 10, 2026 ("SJ Order"), p. 3. Although required to by the Rules of the ALC, Appellant did not file a response to the SJ Motion. SJ Order p. 4, citing SCALC Rule 7(B).[3] The ALC did not schedule, and neither party appeared at, a hearing on the Department's SJ Motion. On July 10, 2026, the ALC issued the SJ Order in which it dismissed the contested case proceeding with prejudice. See SJ Order pp. 4 and 13.

Proceedings before the Court of Appeals

On July 13, 2026, Appellant appealed the SJ Order to this Court by filing a Notice of Appeal with the Clerk of Court.[4] On August 5, 2026, the Clerk of the Court sent a letter to Appellant notifying him that the Court had no record showing he had requested a copy of the transcript and stating that his appeal would be dismissed if he did not file a motion to file the transcript request out of time within ten (10) days of the date of the letter. Motion for Extension of Time, Exhibit A. On August 12, 2026, thirty (30) days after the filing of his Notice of Appeal, Appellant's time to serve and file his Initial Brief expired, without him complying with the requirements of Rule 208, SCACR. On August 14, 2026, Appellant filed the instant Motion for Extension of Time, despite there being no transcript to obtain. Appellant indicated that his motion pertained only to "Appellant's stormwater appeal from ALC Docket No. 25-ALJ-0420-CC." Motion for Extension of Time, p. 1 (emphasis removed).

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[3] The ALC cited to the Rules of Procedure for the Administrative Law Court using the citation form set forth in the SCACR instead of the form set forth in Rule 1 of the Rules of Procedure for the Administrative Law Court.

[4] Appellant's Notice of Appeal references the SJ Order and ALC Docket No. 25-ALJ-07-0420-CC; however, a copy of the SJ Order was not filed.

APPLICABLE SOUTH CAROLINA APPELLATE COURT RULES

The procedure for the filing and perfecting of appeals is set forth in the South Carolina Appellate Court Rules. The South Carolina Appellate Court Rules pertinent to this return and cross-motion are Rules 203, 207, 208, and 260.

In pertinent part, Rule 207(b)(1), SCACR provides that "[w]ithin ten (10) days after the date of service of the notice of appeal, appellant shall, in writing, make satisfactory arrangements with the administrative law court or the agency (administrative tribunal) to obtain a transcript of the proceeding before that body." Rule 208(a)(1), SCACR provides that "[w]ithin thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service."

Additionally, Rule 203(d)(2)(B)(ii), SCACR, provides that appeals from the ALC must be accompanied by a copy of the decision being challenged on appeal, and Rule 260(a), SCACR, provides for dismissal of an appeal by the clerk of court "[w]henever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules."

ARGUMENT

I. THE MOTION FOR EXTENSION OF TIME SHOULD BE DENIED BECAUSE THE REQUIREMENT FOR A TRANSCRIPT IS NOT APPLICABLE TO THIS APPEAL.

Rule 207, SCACR sets forth a comprehensive scheme for appellants to follow regarding arranging for and obtaining a copy of the hearing or trial that is the subject of the appeal. In pertinent part, for appeals from administrative tribunals such as the ALC, the appellant has ten (10) from the date of the notice of appeal to "make satisfactory arrangements with the [ALC] to obtain a transcript of the proceeding before that body." Rule 207(b)(1), SCACR. Although the Rule does not specify a procedure to follow if no proceeding was held below, it is implicit that if no hearing

is scheduled, much less if a hearing is not held, then the Rule is inapplicable because a transcript cannot be produced for a proceeding that is not held.[5]

Here, the ALC neither scheduled nor held a hearing regarding the Department's SJ Motion. SCALC Rule 7(B) provides that if a party fails to submit written opposition to a motion, that failure may be deemed as the party's consent to the relief requested in the motion. Had Appellant complied with the Rule and submitted any written opposition to the Department's SJ Motion, the ALC would have had a potential basis to conclude that a hearing was necessary to the determination of the motion and could have scheduled such a hearing. By not submitting any written opposition to the Department's SJ Motion, Appellant implicitly consented to the relief sought by the Department and failed to assert grounds that would have necessitated a hearing by the ALC.

Although the Clerk of Court requested that Appellant file the Motion for Extension of Time in its August 5, 2026 correspondence with Appellant so that Appellant could cure a perceived defect, the Clerk of Court was not aware of the fact that a hearing was not held before the ALC. The Clerk of Court was merely addressing the fact that proof of the request for a transcript was not filed with the Court as required under Rule 207(b)(1), SCACR. Thus, Appellant cannot rely on the Clerk of Court's correspondence as support for filing of the motion. While Appellant is a *pro se* litigant, as a party to the case, he is nevertheless aware of the fact that the ALC never scheduled much less held a hearing on the SJ Motion. Accordingly, Appellant's Motion for the Extension of Time must be denied as there is no factual basis for the motion.

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[5] There is caveat to this, if a hearing was scheduled but not held, arrangement for a transcript might be appropriate since the reasons why the hearing was not held and the lower courts position on the situation may be relevant to the issues before the appellate court.

II. THE DEPARTMENT IS ENTITLED TO DISMISSAL OF THIS APPEAL BECAUSE APPELLANT FAILED TO COMPLY WITH THIS COURT'S RULES FOR FILING A PROPER NOTICE OF APPEAL AND TIMELY INITIAL BRIEF.

Rule 208(a)(1), SCACR, in pertinent part, provides that "if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service." As discussed *supra*, where the lower court did not conduct a hearing, the appellate court rules regarding the production of a transcript are not applicable. When a transcript is not ordered, or as in this case, is not available because no hearing took place, then an appellant is required to file their initial brief with Court within thirty (30) days of the filing of their notice of appeal. Here, the Appellant filed his Notice of Appeal on July 13, 2026. His time to perfect the appeal by serving and filing his Initial Brief expired on August 12, 2026, without him complying with Rule 208(a)(1). Pursuant to Rule 260(a), SCACR, generally, and Rule 208(a), SCACR, specifically, the Clerk of Court must issue an order dismissing the appeal for Appellant's failure to timely file his Initial Brief.

Moreover, even before time ran for the service and filing of his Initial Brief, Appellant had failed to file a proper Notice of Appeal providing this Court and Respondents with clear notice of the underlying decision being challenged. Specifically, Appellant did not file a copy of the ALC's Order Granting Motion for Summary Judgment in ALC Docket No. 25-ALJ-07-0420-CC with his Notice of Appeal. Under Rule 203(d)(2)(B)(ii), SCACR Appellant's Notice of Appeal, which was served and filed on July 13, 2026, was required to include a copy of the SJ Order. Appellant's failure to comply with this requirement constitutes an additional ground to dismiss his appeal pursuant to Rule 260(a), SCACR.

The fact that Appellant is *pro se* does not relieve him from being responsible for his failures to comply with the appellate court rules. The South Carolina Supreme Court has clearly stated that "[a] pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law." *State v. Burton*, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003). Accordingly, the Department is entitled to the dismissal of Appellant's appeal arising from ALC Docket No. 25-ALJ-07-0420-CC.

CONCLUSION

For the reasons set forth above, the Court should deny Appellant's Motion for Permission to Order Transcript Outside the Rule 207(b)(1) Deadline and grant the Department's Cross Motion for an order directing the Clerk of Court to issue an order denying Appellant's appeal arising from ALC Docket No. 25-ALJ-07-0420-CC in accordance with Rules 208(a)(4), SCACR and 260(a), SCACR.

Respectfully submitted,

s/ Stephen P. Hightower
Stephen P. Hightower, SC Bar # 72265
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South Carolina Department of
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August 24, 2026
Columbia, South Carolina

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CERTIFICATE OF SERVICE

I, Sandra R. Wessinger, paralegal for the South Carolina Department of Environmental Services does hereby certify that on this 24th day of August, 2026, I have served the ***Respondent's Return to Appellant's Motion and Cross-Motion for Dismissal of Appeal Arising from ALC Docket No.: 26-ALJ-07-0420-CC*** by mailing a copy of same to all known parties of records, U. S. Mail, First Class to the following:

Mr. Robert Litzenberger 219 Talons Ridge Road Seneca, South Carolina 29672	Mr. Branden Baker Open Water Realty, LLC 7314 Trail Blvd Naples, Florida 34108

Sandra R. Wessinger

Sandra R. Wessinger

August 24, 2026
Columbia, South Carolina