THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appellate Case No. 2026-001883

JOEL D. BARBER,

Appellant,

v.

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION, REAL ESTATE COMMISSION,

Respondent.

Appeal from the South Carolina Administrative Law Court
Chief Administrative Law Judge Ralph King Anderson III
ALC Docket No. 26-ALJ-11-0068-AP

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the Administrative Law Court err in its Rule 4(B), SCALCR, analysis by stating that a document could not be deemed filed if it was "never received," where Rule 4(B) makes mailing an independent filing event and the disputed factual question was whether Appellant's Brief was actually included in the properly addressed May 20, 2026 mailing?

2. Was the ALC's finding that Appellant's Brief was not included in the May 20, 2026 Court package clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, including Appellant's sworn affidavit, timestamped photographs, contemporaneous email identification of the Brief, USPS proof, the Court's May 26 receipt confirmation, and Respondent's acknowledged receipt of the same Brief?

3. Did the ALC abuse its discretion under Rule 38, SCALCR, by dismissing the appeal with prejudice and denying rehearing instead of permitting a corrected Rule 37-compliant brief where the Brief was timely served on Respondent, Respondent answered its merits, the defects identified by the ALC were curable, and no prejudice to Respondent from correction was shown?

STATEMENT OF THE CASE

This appeal concerns the Administrative Law Court's dismissal of an administrative appeal before the merits of the underlying agency decision were adjudicated in a conforming appellate briefing process. On February 9, 2026, the South Carolina Department of Labor, Licensing and Regulation, Real Estate Commission entered a final order revoking Appellant Joel D. Barber's real-estate license and imposing civil penalties totaling $15,000. Appellant sought review in the Administrative Law Court. The ALC appeal was commenced on March 4, 2026, assigned on March 6, 2026, and the Department filed the Record on Appeal on April 20, 2026. Am. Order of Dismissal at 1.

Under Rule 37(A), SCALCR, Appellant's principal brief was due thirty days after the Record on Appeal was filed; the ALC identified May 20, 2026 as the due date. The ALC later found that the package it received from Appellant on May 26 did not contain the Appellant's Brief. Respondent, however, had received Appellant's Brief and later filed a response addressing the arguments in it. Am. Order of Dismissal at 1-2 & n.2.

On July 16, 2026, the ALC dismissed the appeal with prejudice under Rule 38, SCALCR. On July 28, 2026, Appellant filed a Motion for Rehearing, to Vacate Order of Dismissal, and for Leave to File a Corrected Conforming Brief. The motion identified the Rule 4(B) mailing issue, supplied a sworn affidavit and contemporaneous documentary evidence concerning the May 20 package, and expressly acknowledged that the sixty-four-page copy later supplied to the ALC did not comply with the thirty-page limit and other formal requirements. On August 6, 2026, the ALC amended the dismissal order to correct the package-receipt date from May 27 to May 26. Rehearing Mot. at 1-7; Barber Aff. at 9-10; Am. Order of Dismissal at 1.

On August 6, 2026, the ALC denied rehearing. The dismissal and rehearing issues were decided on written submissions; no evidentiary hearing or oral argument was conducted in the ALC on those issues. The ALC held that the evidence did not establish that the Brief was in the May 20 package, rejected Appellant's Rule 4(B) argument, and concluded that the Brief was in any event nonconforming. Order Denying Rehearing at 1-4. Appellant served and mailed his Notice of Appeal to this Court on August 14, 2026. Notice of Appeal at 1-2. The present appeal challenges the dismissal and denial of rehearing. Appellant does not ask this Court in this appeal to decide the underlying disciplinary merits; he asks that the dismissal be vacated and that the ALC appeal be restored for merits review under a conforming briefing schedule.

STATEMENT OF FACTS RELEVANT TO THE ISSUES

The filing dispute arose from a physical filing package mailed on the day the Appellant's Brief was due. The record assembled on rehearing contains several contemporaneous pieces of evidence created before any dispute existed over the package's contents.

First, on May 20, 2026, Appellant communicated with the ALC law clerk about filing. The law clerk advised that the Court would use the postmarked date on the envelope to determine the filing date. Later that same day, Appellant wrote in the same thread: "Attached please find the USPS receipt/postmark and proof of mailing for the Appellant's Brief filed today in Docket No. 2026-ALJ-11-0068-AP." Rehearing Mot. at 2; Ex. A at 12-15. The statement was made on the deadline and before the package's contents became disputed.

Second, Appellant's sworn affidavit states that he personally assembled two filing packages, one for Respondent and one for the ALC. As to the ALC package, he swore that the Appellant's Brief was the top packet secured by a gold binder clip and that the Motion to Stay was directly beneath it, secured by a black binder clip. He further swore that photographs were taken before the package was closed and mailed and that no document was removed, replaced, or substituted after the photographs were taken. Barber Aff. ¶¶ 2-8, at 9.

Third, the photographs display the Court's Priority Mail box, its address to the Administrative Law Court, and multiple clipped packets inside the box. The photographs were captured at approximately 4:24 p.m. on May 20. The USPS receipt is time-stamped approximately nine minutes later, and the tracking history reflects USPS possession at approximately the same time. Rehearing Mot. Ex. B at 16; Ex. C at 17; Ex. D at 18-21; Barber Aff. ¶¶ 6-8, at 9.

Fourth, USPS tracking reflects delivery to the ALC on May 26, 2026. After tracking showed delivery, Appellant asked in the existing email thread whether the "appellate filing materials" had been received. The ALC law clerk responded that afternoon, with Respondent's counsel copied, "We received them today!" Rehearing Mot. at 2; Ex. A at 12-15. The Amended Order likewise recognizes May 26 as the date the Court received Appellant's package. Am. Order of Dismissal at 1.

Fifth, after the ALC's June 26, 2026 letter stated that the Court had not received Appellant's Brief and requested a response, Appellant transmitted a written response by email and fax on July 2, 2026, together with the May 20 USPS mailing receipt, May 26 USPS delivery confirmation, and the May 26 ALC receipt-confirmation email. On July 6, 2026, the ALC law clerk advised Appellant that fax and email submissions were not considered filed and that documents had to be mailed or hand-delivered with an original signature. The ALC's July 16 Order states that on July 7, 2026, Appellant submitted a response alleging he had served and filed his Brief by mail on May 20, 2026, and it identifies the supporting materials submitted with that response. July 2-6 Correspondence; Order of Dismissal at 2.

Sixth, the ALC's dismissal order states that Respondent informed the Court it had received Appellant's Brief, and Respondent filed a merits response addressing Appellant's arguments. Am. Order of Dismissal at 1-2 & n.2. Thus, there was no dispute that Appellant had prepared and transmitted a Brief to the opposing party. The dispute was whether the corresponding Brief was included in the package mailed to the ALC.

The ALC resolved that factual dispute against Appellant. On rehearing, the Court compared the photographs to the materials in its file and focused on differences in binder clips, concluding the photographs did not establish that the Brief was in the box when mailed. Order

Denying Rehearing at 1-2. Appellant does not ask this Court to determine how the Brief later came to be absent from the ALC file. His position is narrower: the whole-record evidence of what was deposited in the mail must be evaluated under Rule 4(B)'s actual filing standard, and the absence of the Brief from the file after receipt cannot itself substitute for proof of what the package contained at mailing.

Appellant also does not dispute that the sixty-four-page copy later supplied to the ALC failed to conform to Rule 37's page limit and certain formal requirements. His rehearing motion expressly acknowledged those deficiencies and asked for ten days to file a corrected, no-more-than-thirty-page brief containing the required docket number, signature, contact information, authority, record references, conclusion, and proof of service. Rehearing Mot. at 1, 5-7. The ALC declined that request and left the dismissal with prejudice in place. Order Denying Rehearing at 2-4.

SUMMARY OF ARGUMENT

The dismissal should be reversed for three related reasons. First, Rule 4(B), SCALCR, defines filing by delivery or proper mailing. The rehearing order nevertheless stated that the Court could not deem a document filed if it was "never received." As a statement of filing law, that premise is inconsistent with Rule 4(B), which makes mailing an independent filing event. That does not eliminate Appellant's burden to establish what was mailed. The controlling factual question is whether the Appellant's Brief was actually included in the properly addressed May 20 package. If it was, Rule 4(B) deems it filed as of mailing.

Second, the finding that the Brief was not in that package cannot be separated from the whole record. Appellant supplied a sworn account identifying the Brief as the top clipped packet, photographs taken minutes before mailing, a same-day email expressly identifying the mailing as

the Appellant's Brief, USPS acceptance and delivery records, the Court's same-thread confirmation that the appellate filing materials had been received, and Respondent's receipt and merits response. The ALC relied principally on a later comparison of binder clips and the Brief's absence from its file. On this record, the conclusion is clearly erroneous or, at minimum, requires remand for focused fact-finding under the correct Rule 4(B) standard rather than dismissal with prejudice.

Third, Rule 38 says the ALC "may" dismiss; it does not make dismissal with prejudice automatic. Appellant sought correction, not exemption. Respondent had the Brief and answered it. The page-limit, signature, caption, contact, and proof-of-service defects identified by the ALC were capable of correction. South Carolina decisions repeatedly caution against allowing curable procedural defects to extinguish substantive review where a lesser measure can enforce the rules without unfairness. Because the ALC treated a curable briefing problem as a complete forfeiture of the underlying appeal, and because its decision rested in part on an erroneous reading of Rule 4(B), the dismissal and rehearing denial should be vacated.

ARGUMENT

I. THE ALC'S RULE 4(B) ANALYSIS USED AN ERRONEOUS RECEIPT PREMISE; UNDER THE RULE, THE DISPOSITIVE QUESTION IS WHETHER THE BRIEF WAS DEPOSITED IN THE MAIL.

Standard of Review

Review of the ALC's order is governed by S.C. Code Ann. § 1-23-610(B). This Court may reverse or remand when the ALC decision is affected by an error of law, is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or is arbitrary, capricious, or characterized by abuse of discretion. S.C. Code Ann. § 1-23-610(B)(d)-

(f). Construction of the governing procedural rule presents a question of law. See Chapman v. S.C. Dep't of Soc. Servs., 420 S.C. 184, 188-92, 801 S.E.2d 401, 403-06 (Ct. App. 2017) (reversing where administrative review elevated form over substance and added a filing requirement not imposed by the governing law).

A. Rule 4(B) fixes filing by delivery or mailing, not by later docket presence.

Rule 4(B), SCALCR, states in direct terms that "[t]he date of the filing is the date of delivery or the date of mailing." It further provides that a document is deemed filed by "depositing the document in the U.S. mail, properly addressed to the Court, with sufficient first class postage attached." Rule 4(B), SCALCR. The Rule therefore separates the filing act from later internal processing. A party invoking filing by mail must prove what document was deposited, that it was properly addressed, and that the mailing requirements were satisfied; but the Rule does not say the filing date depends upon later scanning, docketing, routing, or continued physical presence in the Court's file.

That text matters because the parties did not dispute that Appellant deposited a properly addressed Court package in the United States Mail on May 20 and that the ALC received the package on May 26. Am. Order of Dismissal at 1; Rehearing Mot. Exs. B-C at 16-17. The disputed fact was the package's contents. Once that dispute arose, Rule 4(B) required a determination of whether the Brief was among the documents deposited in the mail on May 20. The later state of the Court's file was evidence relevant to that question, but it was not the legal definition of filing.

B. The rehearing order applied a different legal rule.

The rehearing order rejected Appellant's Rule 4(B) position on the ground that "the Court could never deem something filed that is never received." Order Denying Rehearing at 2. As a

statement of the filing rule, that formulation is incomplete. Rule 4(B) provides two independent filing events—delivery or mailing—and specifically deems a document filed by depositing it in the U.S. mail, properly addressed to the Court, with sufficient first-class postage. The Rule therefore does not make physical receipt of the document a prerequisite when filing is accomplished by mail.

The distinction is not semantic. If a litigant properly deposits a document in the United States Mail and the evidence establishes that the document was in the mailed package, Rule 4(B) fixes the filing date at mailing even if a later intake or docketing dispute arises. Conversely, if the factfinder determines that the Brief was not actually in the package, Rule 4(B) provides no relief because the Brief itself was never deposited in the mail. Thus, the legal rule does not decide the factual dispute; it identifies the correct factual question: what was deposited in the May 20 mailing?

C. Paschal and Chapman support enforcing filing requirements without adding new forfeiture conditions.

South Carolina appellate decisions have rejected procedural constructions that transform ministerial or curable defects into loss of substantive review when the governing law does not impose the added condition. In Paschal v. Price, 380 S.C. 419, 439-42, 670 S.E.2d 374, 385-87 (Ct. App. 2008), aff'd, 392 S.C. 128, 708 S.E.2d 771 (2011), a timely notice of appeal was returned by the clerk because it lacked a civil cover sheet. This Court declined to allow the cover-sheet defect to defeat the appeal, emphasizing that the governing appeal statutes did not make the cover sheet a filing requirement and recognizing the ministerial nature of the defect.

Chapman applied the same substantive principle in an administrative setting. There, a timely written grievance conveyed the same substantive information later placed on the agency's

preferred form. The Court of Appeals reversed because the decision below elevated form over substance and effectively added a requirement beyond the governing statute and regulation. 420 S.C. at 189-92, 801 S.E.2d at 404-06. Paschal and Chapman do not excuse compliance with valid rules. They demonstrate that courts should apply the filing rule that actually exists, not an additional forfeiture condition created after the fact.

Trowell v. South Carolina Department of Public Safety is especially instructive. There, this Court reversed an administrative timeliness ruling where the agency's interpretation effectively created an unwritten service rule that was not contained in the governing procedure and operated as an overly harsh procedural trap. 384 S.C. 232, 236–37, 681 S.E.2d 893, 895–96 (Ct. App. 2009). Trowell did not involve Rule 4(B), but its principle applies here: an administrative tribunal may enforce the filing rule actually adopted; it should not add a receipt condition that the text of the rule does not contain.

Here, Rule 4(B) expressly identifies mailing as filing. The ALC was entitled to determine whether the Brief was in the package. But that factual determination should be made under Rule 4(B)'s mailing standard, without treating later nonreceipt as a separate filing prerequisite. Paschal and Chapman do not excuse compliance with valid filing rules; they support applying the governing rule as written rather than adding a forfeiture condition the rule does not contain.

D. The Rule 4(B) issue was preserved and warrants reversal or remand.

Appellant expressly raised this point in the Motion for Rehearing. Rehearing Mot. at 4-5. The ALC expressly rejected it. Order Denying Rehearing at 2. The issue is therefore preserved. Because the rehearing order's Rule 4(B) analysis used an erroneous receipt premise while dismissal turned on a disputed package-content question, the appropriate remedy is to vacate the dismissal and remand for application of Rule 4(B) according to its text. If this Court concludes

the existing record establishes that the Brief was in the May 20 package, it should direct the ALC to deem the Brief filed as of May 20 and proceed under a corrected briefing schedule. At minimum, the matter should be remanded for focused fact-finding on the package contents under the proper legal standard.

II. THE FINDING THAT THE APPELLANT'S BRIEF WAS NOT IN THE MAY 20 PACKAGE WAS CLEARLY ERRONEOUS ON THE WHOLE RECORD, OR AT MINIMUM REQUIRED REMAND FOR FURTHER FACT-FINDING.

Standard of Review

Under § 1-23-610(B), this Court does not substitute its judgment for the ALC as to the weight of the evidence on questions of fact. The Court may, however, reverse or remand when a decision is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record," is affected by an error of law, or is arbitrary, capricious, or characterized by abuse of discretion or a clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-610(B)(d)-(f).

A. The evidence of the package contents was contemporaneous, cumulative, and mutually corroborating.

The rehearing record contained direct sworn evidence from the person who assembled the package. Appellant swore that the Brief was the gold-clipped top packet in the ALC box, that the Motion to Stay was immediately beneath it, that the photographs depicted the package immediately before mailing, and that he did not remove, replace, or substitute any document after the photographs were taken. Barber Aff. ¶¶ 2-8, at 9. That testimony addressed the precise factual issue in dispute.

The affidavit was corroborated by evidence created contemporaneously with mailing. On May 20, before any dispute existed, Appellant told the ALC that the USPS receipt was proof of mailing for "the Appellant's Brief filed today." Rehearing Mot. at 2; Ex. A at 12-15. The photographs were captured at approximately 4:24 p.m.; USPS accepted the package minutes later at approximately 4:32-4:33 p.m. Exs. B-D at 16-21. The timing materially reduces the possibility that the photographed filing set and the mailed filing set were unrelated.

Appellant does not rely on the May 20 email itself as the filing event. The email is contemporaneous evidence of what he identified as being placed in the United States Mail that day; Rule 4(B)'s mailing provision is the asserted filing mechanism.

The delivery side of the chain also corroborates the mailing account. USPS tracking shows delivery on May 26. Appellant then asked, in the same filing thread, whether the "appellate filing materials" had been received. The law clerk replied, with Respondent's counsel copied, "We received them today!" Rehearing Mot. at 2; Ex. A at 12-15. The Court later amended its dismissal order to recognize May 26 as the receipt date. Am. Order of Dismissal at 1.

Finally, Respondent had Appellant's Brief and responded to its substance. Am. Order of Dismissal at 1-2 & n.2. That fact does not by itself prove what was inside the ALC's box, but it strongly corroborates Appellant's sworn explanation that matching filing sets were assembled for both recipients on May 20. It also confirms that this case is not one in which no brief existed, no opposing party received it, or no substantive appellate position was communicated.

B. The ALC's binder-clip comparison did not reconcile the whole evidentiary chain.

The rehearing order focused on a discrepancy between the binder clips visible in the photographs and the clipped materials later present in the Court's file. Order Denying Rehearing

at 1-2. That observation was relevant evidence, but the order did not explain why it outweighed the direct affidavit, the same-day identification of the mailing as the Appellant's Brief, the minutes-apart photographs and USPS acceptance, the May 26 receipt confirmation in the existing thread, and Respondent's receipt of the Brief.

Nor is the issue resolved merely by observing that the Brief was absent from the Court's file when the Court later examined it. The absence establishes the file's later contents. It does not, standing alone, establish the contents of a sealed package at the moment of mailing. Rule 4(B) makes that earlier moment legally significant. To use later absence as conclusive proof of nonmailing effectively reproduces the legal error discussed in Issue I.

Appellant is not accusing court personnel of misconduct and does not ask this Court to decide why the documents later differed. The record may permit more than one inference as to what occurred. But where dismissal with prejudice turned on a disputed physical-filing question, the ALC was required to reconcile the whole record under the correct legal standard. Its order did not meaningfully address why the contemporaneous chain was insufficient beyond the later clip comparison and absence of the Brief from the file.

C. At minimum, remand for focused fact-finding is preferable to affirming a merits-ending dismissal on an unresolved intake dispute.

The Court of Appeals need not reweigh the evidence to grant relief. If it concludes that the ALC's ultimate factfinding cannot be sustained on the existing record under § 1-23-610(B)(e), it may reverse. If it concludes that the evidentiary conflict requires additional factfinding, § 1-23-610(B) expressly authorizes remand for further proceedings. A narrow remand could permit the ALC to determine, under Rule 4(B), whether the Brief was included in the May 20 package, giving appropriate weight to the sworn affidavit and contemporaneous documentary chain.

That remedy is especially appropriate because the procedural consequence was not a minor docket correction. The finding ended Appellant's administrative appeal with prejudice and prevented the ALC from conducting merits review of an agency order revoking a professional license and imposing $15,000 in penalties. Where the decisive fact is the contents of a mailed box and the record contains substantial contemporaneous evidence on both mailing and receipt, merits-ending dismissal should not rest on an unreconciled intake discrepancy.

III. DISMISSAL WITH PREJUDICE AND DENIAL OF REHEARING WERE AN ABUSE OF DISCRETION WHERE THE DEFECTS WERE CURABLE, RESPONDENT HAD ACTUAL NOTICE, AND LESSER CORRECTIVE MEASURES WERE AVAILABLE.

Standard of Review

Rule 38, SCALCR, entrusts the choice of sanction to the ALC by providing that an administrative law judge "may dismiss an appeal or resolve the appeal adversely" for noncompliance. South Carolina appellate authority treats dismissal as a severe sanction and recognizes the relevance of prejudice and less drastic alternatives when reviewing a discretionary dismissal. See McComas v. Ross, 368 S.C. 59, 62-63, 626 S.E.2d 902, 904-05 (Ct. App. 2006). Section 1-23-610(B)(f) likewise authorizes reversal or remand for a decision characterized by abuse of discretion or a clearly unwarranted exercise of discretion.

A. Rule 38 authorized discretion; it did not compel dismissal with prejudice.

Rule 38's operative word is "may." The ALC therefore had authority to enforce its briefing rules, but it also had discretion to choose a remedy proportionate to the problem. Rule 3(B), SCALCR, separately permits enlargement of time for good cause except where otherwise

prohibited. And the Notes to Rule 38 recognize that, although pro se litigants remain responsible for compliance, an administrative law judge may make reasonable efforts to assure fairness.

The dismissal order nevertheless described dismissal as a "harsh result" while stating that the Court was "constrained by the rules and legal precedent." Am. Order of Dismissal at 3. That formulation is difficult to reconcile with Rule 38's discretionary text. The rules authorized dismissal, but they did not make dismissal with prejudice the inevitable response to every briefing defect. The ALC was required to exercise judgment as to remedy.

B. Appellant asked to cure the defects, and Respondent had already received and answered the Brief.

On rehearing, Appellant did not ask the ALC to accept a sixty-four-page nonconforming brief. He acknowledged the page-limit and formal defects and requested ten days to submit a corrected brief of no more than thirty pages with the required docket number, signature, contact information, authorities, record references, conclusion, and proof of service. Rehearing Mot. at 1, 5-7. That request would have enforced Rule 37 rather than excused it.

The practical prejudice from allowing correction was minimal. Respondent had already received the Brief and filed a response addressing Appellant's arguments. Am. Order of Dismissal at 1-2 & n.2. Respondent therefore had actual notice of the issues and an opportunity to answer them. A corrected brief could have narrowed the issues and conformed the presentation to Rule 37 without depriving Respondent of any procedural protection.

The ALC also cited deficiencies in the separate Motion to Stay. Rehearing Order at 2-3. Those deficiencies could support refusal to consider that motion until corrected. They did not require extinguishing the underlying administrative appeal. Treating defects in a collateral stay

request as additional justification for dismissal with prejudice compounded rather than cured the disproportionality.

C. South Carolina law favors merits disposition over forfeiture for curable procedural defects.

South Carolina appellate courts have repeatedly cautioned that dismissal is a severe procedural sanction. In Small v. Mungo, the Supreme Court explained that procedural rules should be reasonably applied to facilitate the orderly disposition of litigation on the merits, and although dismissal for failure to proceed was warranted there, dismissal with prejudice was not. 254 S.C. 438, 442-44, 175 S.E.2d 802, 804 (1970).

McComas similarly recognized that dismissal for failure to prosecute is generally associated with factors such as personal responsibility, prejudice to the opposing party, a history of deliberate delay, and whether a less drastic sanction would be effective. 368 S.C. at 63, 626 S.E.2d at 904-05. Those Rule 41 cases do not control Rule 38 mechanically, but the proportionality principle is instructive where Rule 38 itself confers discretion and the chosen sanction permanently terminates appellate review.

Paschal and Chapman reinforce the same policy in filing contexts. Paschal refused to permit a ministerial cover-sheet defect to defeat a timely administrative appeal. 380 S.C. at 439-42, 670 S.E.2d at 385-87. Chapman reversed an administrative decision that elevated form over substance where the timely filing conveyed the required substantive notice. 420 S.C. at 189-92, 801 S.E.2d at 404-06. Those decisions do not eliminate deadlines or formatting rules; they support correction rather than forfeiture where the governing framework permits it and the opposing party is not unfairly prejudiced.

Gordon v. Busbee reinforces that remedial principle. The Court of Appeals reversed a dismissal where a verified complaint supplied the information required to present a probate claim even though the claimant did not use the particular probate form urged by the opposing party; requiring the redundant form would have elevated form over substance. 367 S.C. 116, 120–21, 623 S.E.2d 857, 859–60 (Ct. App. 2005). Gordon did not excuse a substantive deadline, and Appellant likewise does not ask to excuse Rule 37. He asks to enforce the rule through a corrected conforming brief rather than extinguish the administrative appeal where Respondent had the brief, answered it, and identified no prejudice from correction.

The circumstances here favor correction. Appellant mailed a package on the deadline; contemporaneously identified the filing as his Appellant's Brief; the Court confirmed receipt of appellate filing materials; Respondent obtained the Brief and answered it; and Appellant later submitted sworn and documentary evidence concerning the disputed package contents. He expressly offered to replace the nonconforming copy with a Rule 37-compliant brief. The ALC identified no prejudice to Respondent that a corrected filing would cause.

D. The ALC's alternative abandonment and merits observations do not make the Rule 38 error harmless.

The dismissal order stated that, even if the Brief were considered timely and properly filed, the Court would consider only the first thirty pages and viewed issues in those pages as abandoned for lack of supporting authority. Am. Order of Dismissal at 2-3 & n.3. The rehearing order further stated that the nonconforming brief was deficient and expressed an alternative view that the agency decision was supported by substantial evidence. Order Denying Rehearing at 3-4.

Those alternative observations do not answer the remedy Appellant actually requested. Appellant did not seek an order treating the sixty-four-page copy as a conforming Rule 37 brief.

He sought leave to replace it with a corrected brief complying with the page limit and authority requirements. Rehearing Mot. at 1, 5-7. If Rule 38 discretion should have been exercised to permit correction, then abandonment based on the defects of the superseded nonconforming copy cannot make refusal to permit a conforming filing harmless.

Nor does the ALC's summary alternative merits observation substitute for the merits review that the dismissed appeal was supposed to receive. This Court need not decide the underlying Commission issues now. The appropriate appellate remedy is to restore the ALC appeal so those issues can be presented in a conforming brief, answered in the ordinary course, and adjudicated under the statutory standard of review.

E. Denial of rehearing perpetuated the same legal and discretionary errors.

Rule 40(B), SCALCR, required Appellant to identify the points overlooked or misapprehended before appealing. He did so: the rehearing motion squarely raised Rule 4(B), the contemporaneous filing evidence, Rule 38 discretion, the lack of prejudice to Respondent, and the request for a corrected brief. Rehearing Mot. at 1-7. The ALC addressed and rejected those points. Order Denying Rehearing at 1-4. Because the denial retained the erroneous Rule 4(B) receipt premise and again refused a lesser corrective remedy, the rehearing order should be vacated together with the dismissal.

CONCLUSION AND RELIEF REQUESTED

Appellant respectfully requests that this Court reverse and vacate the July 16, 2026 Order of Dismissal as amended on August 6, 2026, and the August 6, 2026 Order Denying Motion for Rehearing, and remand the case to the Administrative Law Court with instructions to restore the administrative appeal and permit Appellant to file a corrected Rule 37-compliant brief within a reasonable time set by the ALC.

Alternatively, if this Court concludes that the existing record does not permit a definitive determination of the May 20 package contents, Appellant requests that the dismissal be vacated and the matter remanded for focused fact-finding on whether the Appellant's Brief was included in the properly addressed package deposited in the United States Mail on May 20, 2026, applying Rule 4(B) according to its text. After that determination, the ALC should exercise Rule 38 discretion in light of the curable nature of the briefing defects, Respondent's actual receipt and merits response, and the availability of less drastic corrective measures.

Respectfully submitted,

s/ Joel D. Barber

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September 14, 2026

CERTIFICATE OF SERVICE

I certify that on September 14, 2026, I served a true and correct copy of the foregoing Initial Brief of Appellant and the accompanying Rule 209 Designation of Matter to Be Included in the Record on Appeal upon counsel for Respondent by United States Mail, first-class postage prepaid, and by electronic mail, addressed as follows:

Katherine Landess

Office of General Counsel

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s/ Joel D. Barber

Joel D. Barber, Appellant, pro se

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