



REAPING WHAT YOU SOW:
A PERSPECTIVE FROM THE
SOUTH CAROLINA COURT OF APPEALS

Kenneth A. Richstad
Clerk

SOWING THE SEED

SECTION 42-17-60. *Conclusiveness of award; appeals; payment of compensation during appeal; accrual of interest.*

The award of the commission, as provided in Section 42-17-40, if not reviewed in due time, or an award of the commission upon the review, as provided in Section 42-17-50, is conclusive and binding as to all questions of fact. However, either party to the dispute, within thirty days from the date of the award or within thirty days after receipt of notice to be sent by registered mail of the award, but not after, whichever is the longest, may appeal from the decision of the commission to the court of appeals. Notice of appeal must state the grounds of the appeal or the alleged errors of law.

SCACR 203(b)(6)

(6) Appeals From Administrative Tribunals. *When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.*

SCACR 203(d)(2) – Appeals from administrative tribunals

(B) When and What to File. *The notice of appeal shall be filed with the clerk of the appellate court within the time required to serve the notice of appeal under Rule 203(b)(6). The notice filed with the appellate court shall be accompanied by the following:*

(i) *Proof of service showing that the notice has been served on the agency, the administrative law court (if it has been involved in the case), and all parties of record;*

(ii) *A copy of the decision(s) to be challenged on appeal; and*

(iii) A filing fee as set by order of the Supreme Court (\$100.00, but not charged for appeals by the State of South Carolina or its departments or agencies).

(2) Appeals from Administrative Tribunals. In appeals from administrative tribunals, the notice of appeal shall contain the following information:

(A) The name of the agency and the name of the administrative law judge (if applicable).

(B) The docket number of the case before the administrative law court, or if the appeal is from an agency, the docket number before the agency.

(C) The date of the decision from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received the decision from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

(D) The name of the party taking the appeal.

(E) The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

FORM 6
NOTICE OF APPEAL FROM ADMINISTRATIVE TRIBUNAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

XXXXXXXXXXXX, Commissioner
YYYYYYYYYYYY, Commissioner
ZZZZZZZZZZZZ, Commissioner

Case No. _____

Claimant, Appellant or Respondent

v.

Employer and Carrier, Appellant or Respondent

NOTICE OF APPEAL

Employee/Employer and Carrier appeal(s) the decision of the Workers' Compensation Commission dated _____. Appellant(s) received a copy of this decision on September 3, 2006.

Date _____

s/ John E. Smith

John E. Smith
Post Office Box 123
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Appellant(s)

Other Counsel of Record:
Mary P. Jones
Post Office Box 456
Greenville, South Carolina 29000
(864) 000-0000
Attorney for Respondent(s)

WATERING

SCACR 207 – Transcript of Proceeding

*(1) **Ordering the Transcript.** Within 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. Appellant shall contemporaneously furnish all counsel of record, and the clerk of the appellate court with copies of all correspondence with the administrative tribunal. Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings before the administrative tribunal. If a party to the appeal unjustifiably refuses to agree to order less than the entire transcript, appellant may move to be awarded costs for having unnecessary portions transcribed; this motion must be made no later than the time the final briefs are due under Rule 211. The administrative tribunal may establish reasonable rates for providing the transcript or a copy thereof.*

*(2) **Delivery of Transcript.** The administrative tribunal shall insure that the transcript is delivered to the appellant within (60) days after the date of the request.*

*(3) **Extension.** If the administrative tribunal cannot deliver the transcript in the time specified, it shall promptly seek an extension from the appellate court. The request for an extension shall be in writing and shall comply with Rule 224, SCACR.*

*(4) **Failure to Receive Transcript.** If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the clerk of the appellate court, and the administrative tribunal in writing.*

*(c) **Duty of Appellant.** The transcript received from the court reporter or the administrative tribunal must be retained by appellant during the entire appeal and for a period of at least one (1) year after the remittitur (See Rule 221) is sent to the lower court or administrative tribunal.*

FERTILIZING

SCACR 208, 209, 212 – Initial Briefs and Designations of Matter; Final Briefs

This should be a familiar procedure to anyone who has done an appeal. The content of the initial brief differs from the final brief essentially only in the citations to the record. In the initial brief, citations are to the testimony and exhibits as they appeared below. By contrast, in the final briefs (Rule 211) the citations are to the Record on Appeal (Rule 210).

The Designation of Matter is a listing of the material the parties propose to include in the Record on Appeal. Only matter that has been before the administrative tribunal may be designated and, of that, only matter that is relevant to the appeal.

The final briefs must have the correct covers and be served and filed with the correct number of copies: one copy served on every other party to the appeal and an original and 14 copies filed with the Court.

WEEDING

SCACR 210 – Record on Appeal

Under Rule 210(c), the Record on Appeal may not include matter which was not presented to the administrative tribunal. Irrelevant matter may not be included in the Record on Appeal.

The appellate court will not consider any fact that does appear in the Record on Appeal. Supplementation of the Record on Appeal is addressed in Rule 212 and supplementary citation to authority is addressed in Rule 208(b)(7).

One copy of the Record on Appeal is served on each party who has served a brief. The proof of service must be filed immediately with the appellate court.

An original and 14 copies are filed with the Court at the time the final briefs are filed.

PEST CONTROL

SCACR Rule 224 – Motions and petitions

Various motions may be filed during the course of an appeal. The form of these motions is governed by Rule 224, in conjunction with the general rule on form (Rule 238).

There is a fee of \$25 for motions. This provision does not apply to motions or petitions filed by the State of South Carolina or its departments or agencies.

Failure to file a return to a motion may be deemed consent (Rule 224(e)).

Most motions are handled by a single judge acting for the Court. Reconsideration of an order on a motion is not allowed unless the order had the effect of dismissing or finally deciding a party's appeal (Rule 224(i))

GOVERNMENT RELIEF

SCACR 234(b) – Extensions and late filing

The appellate courts have the authority to grant extensions and late filing in all cases except the time for service of the notice of appeal.

The appellate courts have the authority to grant extensions and late filing in all cases except the time for service of the notice of appeal.

The appellate courts have the authority to grant extensions and late filing in all cases except the time for service of the notice of appeal.

FUEL SURCHARGE

SCACR 222 – Costs on Appeal

a) To Whom Allowed. *Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.*

(b) Costs Allowed. *The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. In addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court (\$1,000). The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.*

*(c) **Costs for Printing Irrelevant Matter.** A party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record on Appeal. Further, a party not otherwise entitled to costs under this Rule shall be entitled to collect the cost the party incurred for printing irrelevant matter which another party unjustifiably designated to be included in the Record on Appeal.*

*(d) **Motion for Costs.** A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 224. If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 224. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.*

*(e) **Taxation.** Costs on appeal shall be taxed only in the appellate court. If costs are taxed, they shall become part of the judgment of the appellate court and shall be added to the remittitur. If a petition for a writ of certiorari is sought under Rule 226, the Court of Appeals shall tax costs only in those cases in which the petition for a writ of certiorari is denied. In all cases in which a writ of certiorari is granted, costs shall be awarded in the manner provided by Rule 226(j).*

LENGTH OF GROWING SEASON

If there is no transcript to be ordered and produced and if there are no extensions in the process, your appeal will be ready for consideration in less than six months. Transcript production and extensions lengthen this period accordingly.

Once a case is ready for consideration, the Court of Appeals can usually schedule it, consider it, and issue the decision within six months.

HARVESTING

SCACR 220, 221 – Opinions, Rehearing

Once the opinion is filed, the parties have 15 days to petition for rehearing. The petition for rehearing must be actually received in the Court by the 15th day. The rule of actual receipt is a departure from the general rule that filing is complete upon mailing (Rule 233 Filing and Service).

Petitions for writ of certiorari to the Court of Appeals are governed by Rule 226.