

CHAPTER 9

Institute of Archeology and Anthropology

Statutory Authority: 1976 Code, Article 3 of Chapter 7 of Title 54

9-100. ADJUDICATION RULES.

(Statutory Authority: 1976 Code §§ 60-13-210, 54-7-640, 54-7-720, 54-7-740, 54-7-800)

Editor's Note

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

Table of Contents

I. GENERAL PROVISIONS

- 9-100.1. Definitions.
- 9-100.2. Scope of Rules.
- 9-100.3. Construction and Modification or Waiver of Rules.
- 9-100.10. Adjudicator: Assignment.
- 9-100.11. Adjudicator: Powers.
- 9-100.12. Adjudicator: Withdrawal; Disqualification; Unavailability.
- 9-100.20. Ex Parte Communications.
- 9-100.21. Separation of Functions.
- 9-100.30. Rights of [Docketed Party], Intervenor, and Limited Participant.
- 9-100.40. Representation.
- 9-100.50. Service of Documents.
- 9-100.51. Filing of Documents and Other Materials.
- 9-100.52. Form and Content of Filed Documents.
- 9-100.53. Amendment or Supplementation of Filed Documents.
- 9-100.60. Time Computation.
- 9-100.70. Motions.
- 9-100.71. Subpoenas.
- 9-100.80. Withdrawal or Dismissal.

II. THE PREHEARING STAGE

- 9-100.200. Initiation of Adjudication.
- 9-100.201. Consolidation or Severance of Adjudication.
- 9-100.210. Intervention.
- 9-100.211. Limited Participation.
- 9-100.220. Prehearing Statements.
- 9-100.221. Prehearing, Settlement, and Other Conferences.
- 9-100.230. Discovery: General.
- 9-100.231. Discovery: Scope.
- 9-100.232. Discovery: Supplementation of Response.
- 9-100.233. Interrogatories.
- 9-100.234. Depositions.
- 9-100.235. Requests for Production of Documents or Things for Inspection or Other Purposes.
- 9-100.236. Requests for Admissions.
- 9-100.237. Discovery: Protective Order.

- 9–100.238. Discovery: Motion to Compel Discovery.
- 9–100.239. Discovery: Sanctions for Failure to Comply.
- 9–100.240. Settlement: Alternative Dispute Resolution.

III. THE HEARING

- 9–100.300. Scheduling and Notice of Hearing.
- 9–100.310. Failure of Party to Appear.
- 9–100.320. Evidence: Admissibility.
- 9–100.322. Evidence: Confidential and Sensitive Information.
- 9–100.324. Evidence: Stipulations.
- 9–100.325. Evidence: Written Testimony.
- 9–100.326. Evidence: Exhibits and Documents.
- 9–100.327. Evidence: Witness Fees; Oath or Affirmation; Refusal to Testify.
- 9–100.328. Burden of Going Forward with Evidence.
- 9–100.329. Burden of Proof.
- 9–100.330. Closing of Record.
- 9–100.340. Proposed Findings; Closing Arguments; Briefs.
- 9–100.350. Record of Hearing.
- 9–100.360. Decision of Adjudicator.

IV. APPEAL

- 9–100.400. Interlocutory Review.
- 9–100.410. Petitions for Review.
- 9–100.420. Appellate Briefs.
- 9–100.430. Oral Argument.
- 9–100.440. Final Decision.
- 9–100.450. Reconsideration.

I. General Provisions

Comment: The General Provisions define the scope of these rules, define essential terms, and detail the construction and modification or waiver of these rules. They set forth the powers and duties of the Adjudicator and detail the rights of the parties involved. They contain provisions for an assignment to an adjudicator and terms for the adjudicator’s dismissal, whether voluntary or involuntary. They give detailed instructions on party representation, service of process, filing of documents, the form and content of such filed documents, and the process to amend filed documents. Finally, the General Provisions provide a detailed summary of time computation, motions allowed, the adjudicator’s subpoena powers, and the effect and method for withdrawal or dismissal of a claim.

9–100.1. Definitions.

A. “Adjudication” means a trial-type proceeding (whether conducted pursuant to the Administrative Procedure Act (S.C. Code Ann. Section 1–23–310, et seq.), other statutes, or agency regulations or practice) that offers an opportunity for an oral, fact-finding hearing before an Adjudicator, whether or not an administrative law judge.

B. “Adjudicator” is one or more individuals who preside(s) at the reception of evidence and issue(s) a decision.

C. “Agency” is an agency as defined in S.C. Code Ann. Section 1–23– 310.

D. “Alternative Dispute Resolution” means any procedure that is used in lieu of an adjudication to resolve issues in controversy, including, but not limited to, settlement, negotiations, conciliation, facilitation, mediation, fact finding, minitrials, and arbitration, or any combination thereof.

E. “Director” means Office of the Director of SCIAA and State Archaeologist.

F. “[Docketed Party]” is a person required by law to participate in an adjudication; see R. 9–100.30.

G. “Intervenor” is a person entitled by law or permitted by the agency to participate as a party; see R. 9–100.30.

H. “Limited Participant” is a person permitted by agency discretion to participate other than as a party; see R. 9–100.30.

I. “Motion” means a request made to the Adjudicator.

J. “Party” is a person who has full participation rights in an adjudication.

K. “Person” includes an individual, partnership, corporation, association, public or private organization, or governmental agency.

L. “SCIAA” means the South Carolina Institute of Archaeology and Anthropology.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.2. Scope of Rules.

A. These rules of practice and procedure are applicable to adjudications before SCIAA arising under or authorized by the South Carolina Underwater Antiquities Act of 1991, S.C. Code Ann., Section 54–7–610, et seq.

B. In the absence of a specific provision, the South Carolina Rules of Civil Procedure shall serve as a general guide.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.3. Construction and Modification or Waiver of Rules.

A. These rules shall be liberally construed so as to secure the fair, expeditious, and least costly determination of all proceedings, consistent with consideration of the issues involved and protection of the rights of all interested persons.

B. Except to the extent that waiver would otherwise be contrary to law, the Adjudicator(s) may, after adequate notice to all interested persons, modify or waive any of these rules upon a determination that no party will be prejudiced and that the ends of justice will be served.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.10. Adjudicator: Assignment.

Adjudications shall be presided over by an Adjudicator who shall be designated by the Director of SCIAA.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.11. Adjudicator: Powers.

The Adjudicator shall have all powers necessary to the conduct of fair, expeditious, and impartial hearings, including the following:

A. To administer oaths and affirmations;

B. To issue subpoenas authorized by law;

C. To rule on offers of proof and receive relevant evidence;

D. To take depositions or have depositions taken when the ends of justice would be served;

E. To regulate the course of the hearing and the conduct of persons at the hearing;

F. To hold conferences for the settlement or simplification of the issues by consent of the parties or by the use of alternative dispute resolution;

G. To inform the parties as to the availability of one or more methods of alternative dispute resolution, and encourage use of such methods;

H. To require the attendance at any conference held pursuant to Subsection F. of at least one representative of each party who has authority to negotiate concerning resolution of the issues in controversy;

I. To dispose of procedural motions;

J. To make or recommend decisions;

K. To call and question witnesses;

L. To impose appropriate sanctions against any party or person failing to obey her/his order, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith; and

M. To take any other action authorized by SCIAA.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.12. Adjudicator: Withdrawal; Disqualification; or Unavailability.

A. Withdrawal or Disqualification of Adjudicator.

1. An Adjudicator may at any time disqualify her/himself.

2. a. Prior to the filing of the Adjudicator's decision, any party may move that the Adjudicator disqualify her/himself on the ground of personal bias or other disqualification, by filing with the Adjudicator promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

b. The Adjudicator shall rule upon the motion, stating the grounds therefor. If the Adjudicator concludes that the motion is timely and has merit, the Adjudicator shall forthwith disqualify her/himself and withdraw from the adjudication. If (s)he does not disqualify her/himself and withdraw from the adjudication, (s)he shall proceed with the adjudication, or if the hearing has been concluded, (s)he shall proceed with the issuance of her/his decision.

c. An Adjudicator's denial of a motion for disqualification may be appealed at the conclusion of the proceeding unless the requirements of R. 9-100.400 [Interlocutory Review] are satisfied.

B. Unavailability of Adjudicator. In the event that the Director of SCIAA finds that an Adjudicator is unable to perform the duties of Adjudicator or otherwise becomes unavailable, the Director of SCIAA shall designate another Adjudicator to serve.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.20. Ex Parte Communications.

A. Except to the extent required for the disposition of ex parte matters as authorized by law, the Adjudicator may not consult a person or party on any matter relevant to the merits of the adjudication, unless on notice and opportunity for all parties to participate.

B. Except to the extent required for the disposition of ex parte matters as authorized by law:

1. no interested person outside the agency shall make or knowingly cause to be made to the Adjudicator, SCIAA, or any employee who is or may reasonably be expected to be involved in the decisional process an ex parte communication relevant to the merits of the adjudication;

2. no member of the body comprising SCIAA, the Adjudicator, or other employee who is or may reasonably be expected to be involved in the decisional process of the adjudication, shall make or knowingly cause to be made to any interested person outside the agency an ex parte communication relevant to the merits of the adjudication.

C. SCIAA, the Adjudicator, or other employee who is or may reasonably be expected to be involved in the decisional process who receives, makes, or knowingly causes to be made a communication prohibited by this rule shall place in the public record of the adjudication:

1. All such written communications;

2. Memoranda stating the substance of all such oral communications; and

3. All written responses, and memoranda stating the substance of all oral responses, to the materials described in subsection B(1) and B(2). above.

D. Upon receipt of a communication knowingly made or knowingly caused to be made by a party in violation of this rule, SCIAA or the Adjudicator may, to the extent consistent with the interests of justice, the policy of underlying statutes, and SCIAA's rules and precedents, require the party to show cause why its claim or interest in the adjudication should not be dismissed, denied, disregarded, or otherwise adversely affected by reason of such violation.

E. The prohibitions of this rule shall apply beginning with the filing of a pleading with the Director in a matter, but in no case shall they begin to apply later than the time at which a proceeding is noticed for hearing unless the person responsible for the communication has knowledge that it will be noticed,

in which case the prohibitions shall apply beginning at the time of her/his acquisition of such knowledge.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.21. Separation of Functions.

A. The Adjudicator may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigating or prosecuting functions for SCIAA.

B. No officer, employee, or agent of SCIAA engaged in the performance of investigations or prosecutorial functions in connection with any adjudication shall, in that adjudication or one that is factually related, participate or advise in the decision of the Adjudicator, except as a witness or counsel in the adjudication or its appellate review.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.30. Rights of [Docketed Party], Intervenor, and Limited Participant.

A. The rights of a [Docketed Party] are determined by statute, these rules, and other applicable law.

B. An intervenor's right to participate as a party may be restricted by order of the Adjudicator pursuant to statute, these rules, or other applicable law.

C. At such times and in such manner as ordered by the Adjudicator, a limited participant may be permitted to make oral and/or written submissions.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.40. Representation.

A. Any person may appear in an adjudication on her/his/its own behalf or by an attorney.

B. An attorney must be a member in good standing of the bar of the State of South Carolina.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.50. Service of Documents.

A. Service by SCIAA. SCIAA or the Adjudicator shall serve one copy of all orders, notices, decisions, rulings on motions, and similar documents issued by SCIAA or the Adjudicator upon each party and limited participant in accordance with section C., below. Every document served by SCIAA or the Adjudicator shall be accompanied by a certificate of service that provides the information in the form described in section B., below.

B. Service by Others. Unless otherwise ordered by SCIAA or the Adjudicator, one copy of all documents filed with SCIAA or the Adjudicator shall be served upon each party and limited participant by the persons filing them. Every document filed with SCIAA or the Adjudicator and required to be served upon all parties and limited participants shall be accompanied by a certificate of service signed by (or on behalf of) the party making the service, stating that such service has been made. Certificates of service should be in substantially the following form:

"I hereby certify that I have this day served the foregoing document(s) upon the following parties and limited participants (or designated representatives) in this proceeding at the address indicated by [specify the method]:

(x) [name/address]"

Dated at _____ this _____ day of 19__

(Signature) _____

For _____

Capacity _____

C. How Service May Be Made. Service may be made first-class mail or by other more expeditious methods of service such as personal or overnight delivery, FAX, or electronic means; however, SCIAA or the Adjudicator may place appropriate limitations on service by FAX or electronic means.

D. Who Shall Be Served. Unless otherwise ordered by SCIAA or the Adjudicator, all documents shall be filed pursuant to R. 9–100.51 (Filing of Documents) and served upon counsel and representatives of record, or if not represented, the parties and limited participants themselves. Service upon such counsel or representative shall constitute service upon the party or limited participant.

E. Where Service Is to Be Made. Service shall be made at the address of the party's or limited participant's counsel or representative, or, if not represented, at the address of the residence or principal place of business of the party or limited participant.

F. When Service Is Complete. If service is made by personal or overnight delivery, delivery is complete when the document is handed to the person to be served or delivered to the person's office during business hours or, if the person to be served has no office, is delivered to the person's residence and deposited in a conspicuous location. If service is by first-class mail, FAX, or other electronic means, service is complete upon deposit in the mail or upon electronic transmission.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.51. Filing of Documents and Other Materials.

A. All documents, and other materials relating to an adjudication, shall be filed with the Office of the Director of SCIAA.

1321 Pendleton Street
Columbia, SC 29208
(803) 777–8170 (voice)
(803) 734–0566 (voice)
(803) 254–1338 (fax)
e-mail: rippettaub@garnet.cla.sc.edu
amerc@garnet.cla.sc.edu

B. Unless otherwise ordered by SCIAA, an original and four copies of each document (including exhibits and the like) are to be filed. Copies need not be signed, but the name of the person signing the original shall be shown on each copy.

C. Filing may be made by first-class mail or by other more expeditious methods of filing such as personal or overnight delivery, FAX, or electronic means; however, SCIAA or the Adjudicator(s) may place appropriate limitations on filing by FAX or electronic means.

D. In any proceedings when, upon inspection, it appears that a document (or other material) tendered for filing does not comply with the requirements of these rules, the [docket clerk or other designated, official person] may decline to accept the document (or other material) for filing and return it unfiled or may accept it and advise the person tendering it of the deficiency and require the deficiency to be corrected.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.52. Form and Content of Filed Documents.

A. Necessary Information. A filed document shall state clearly:

1. that it is a SCIAA matter,
2. the name of the proceeding,
3. the name and designation (such as “applicant,” “petitioner,” or “respondent”) of the filing party,
4. the type of filing (e.g., petition, notice, motion to dismiss, etc.),
5. any assigned docket number of the case, and
6. the filing party's or other filing person's address, telephone number, and FAX number (if any).

B. Specifications.

1. All filed documents created by a party shall (except as specified or agreed otherwise):
 - a. be 8 1/2 by 11 inches in size except, when necessary, tables, charts, and other attachments may be larger if folded to the size of the filed documents to which they are physically attached;

- b. be only on one side of the page and be typewritten, printed, or otherwise reproduced by a process that produces permanent and plainly legible copies;
- c. be double-spaced except for footnotes and long quotations, which may be single-spaced;
- d. have a left margin of at least 1 1/2 inches and other margins of at least 1 inch; and
- e. be bound on the left side, if bound.

2. Illegible documents will not be accepted.

3. All documents shall be in the English language or, if in a foreign language, accompanied by a certified translation.

C. Signature. The original of every filed document shall be signed by the submitting party or its attorney or other authorized representative of record. Except as otherwise provided, filed documents need not be verified or accompanied by an affidavit. The signature constitutes a certification by the signing person that (s)he has read the filed document, that to the best of her/his knowledge, information, and belief the statements made therein are true, and that it is not interposed for delay.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.53. Amendment or Supplementation of Filed Documents.

A. A party shall amend or supplement a previously filed document if the party learns of a change in the facts that may affect the outcome of the adjudication.

B. The Adjudicator may approve other amendments or supplements to filed documents.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.60. Time Computation.

A. In computing any period of time prescribed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or State or federal holiday. When the period of time prescribed is seven (7) days or less, intermediate Saturdays, Sundays, and federal holidays shall be excluded in the computation.

B. If service is by first-class mail, three (3) days shall be added to the designated period for response.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.70. Motions.

A.1. All motions shall state the specific relief requested and the basis therefor and, except as provided in paragraph 2. below, shall be in writing.

2. Unless otherwise ordered by the Adjudicator, a motion may be made orally during a conference or the hearing. After an opportunity for response, the Adjudicator may rule on the motion immediately or may direct that the motion and response be submitted in writing pursuant to subsection A(1).

B. Unless otherwise directed by the Adjudicator, any party may file a response in support of or in opposition to any written motion within ten (10) days after service of the motion. If no response is filed within the response period, the party failing to respond shall be deemed to have waived any objection to the granting of the motion. The moving party shall have no right to reply to the response; however, the Adjudicator may in her/his discretion permit a reply to be filed.

C. Except for procedural matters, the Adjudicator may not, without assent of the parties, grant a written motion prior to the expiration of the time for filing responses. Any party adversely affected by the ex parte grant of a motion for a procedural order may request reconsideration, vacation, or modification of the order within ten (10) days of service of the order. The Adjudicator may deny a written motion without awaiting a response or may allow oral argument (including that made by telephone).

D. The Adjudicator may summarily deny dilatory, repetitive, or frivolous motions. Unless otherwise ordered by the Adjudicator, the filing of a motion does not stay a proceeding.

E. All motions and responses thereto shall comply with R. 9–100.50 [Service of Documents] and R. 9–100.51 [Filing of Documents and Other Materials].

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.71. Subpoenas.

Upon request of a party, the Adjudicator may issue a subpoena requiring:

- A. attendance of a witness for purpose of giving testimony, and
- B. production of documents or things for inspection or other purposes.

Upon motion of a person served with a subpoena (or by a party), the Adjudicator may quash or modify the subpoena for good cause shown.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.80. Withdrawal or Dismissal.

A. Withdrawal.

1. An adjudication may be withdrawn without an order of the Adjudicator,
 - a. by the filing of a stipulation of all parties who have appeared in the adjudication, or
 - b. by the filing of a notice of withdrawal by the [party initiating the adjudication] at any time before another party has served a responsive pleading or, if there is none, before the introduction of evidence at the hearing.

A notice of withdrawal may not be filed by a party who has previously withdrawn or been dismissed from an adjudication based on (or including) the same claim. Unless otherwise stated in the notice of withdrawal or stipulation, a withdrawal is without prejudice.

2. Except as provided above, an adjudication may not be withdrawn except by order of the Adjudicator and upon such terms and conditions as the Adjudicator deems proper.

B. Dismissal. Any party may move to dismiss the adjudication or any request for relief sought therein for:

1. failure of another party to comply with these rules or with any order of the Adjudicator, or
2. failure to prosecute the adjudication.

Unless the Adjudicator specifies otherwise, a dismissal under this subsection, other than a dismissal for lack of jurisdiction, operates as an adjudication upon the merits.

II. The Prehearing Stage

Comment: The Prehearing Stage provisions detail the initiation of an action, consolidation and severance of actions, and intervention and limited participation in actions. They set forth the rules pertaining to prehearing matters, including all phases of discovery (including but not limited to interrogatories, depositions, and requests to produce or admit). The section also provides details regarding protective orders, motions to compel, sanctions for failure to comply with orders, and a method for alternative dispute resolution.

9–100.200. Initiation of Adjudication.

A. An adjudication is initiated when a pleading is filed with the Director.

B. The document initiating the adjudication shall state briefly the nature of the proceeding, the identity of known parties, the jurisdiction under which the adjudication is initiated, the general allegations of fact, the legal authority that constitutes a basis for the adjudication, and the nature of the relief sought.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.201. Consolidation or Severance of Adjudication.

A. Consolidation. The Adjudicator may, upon motion or on her/his own motion, with reasonable notice and opportunity to object provided to all parties affected, consolidate any or all matters at issue in two or more adjudications docketed under these rules where common parties, fact questions, or

applicable law exist and where such consolidation would expedite or simplify consideration of the issues and the interests of justice would be served. Consolidation shall not prejudice any rights under these rules and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this rule, no distinction is made between joinder and consolidation of adjudications.

B. Severance. Unless directed otherwise by SCIAA or the Director of SCIAA, the Adjudicator may by motion or on her/his own motion, for good cause shown, order any adjudication severed with respect to some or all parties, claims, and issues.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.210. Intervention.

A. Any person who desires to participate in an adjudication as an intervenor shall file a motion to intervene in a timely manner.

B. A motion to intervene shall:

1. indicate the legal basis that supports the motion to intervene;
2. set forth the property, financial, or other interest of the movant in the adjudication;
3. identify the specific aspect or aspects of the adjudication as to which the movant wishes to intervene; and
4. state any other facts or reasons why the movant should be permitted to intervene.

C. Any party to an adjudication may file within ten (10) days a response to a motion to intervene after the motion is filed.

D. In ruling on a motion to intervene, the Adjudicator shall consider the factors in section B.

E. If the Adjudicator determines that a movant does not meet the requirements under this Rule to be an intervenor, the Adjudicator may view the motion to intervene as if it had been timely filed as a motion to participate as a limited participant under R. 9–100.211 [Limited Participation].

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.211. Limited Participation.

A. A person wishing to participate in an adjudication other than as a party shall file a motion to participate as a limited participant. The motion shall state concisely the reasons why the person wishes to participate in the adjudication and the extent of participation desired.

B. The Adjudicator may grant the motion if (s)he finds that the person making the motion may contribute materially to the Adjudicator's ability to make an informed decision in the adjudication. The Adjudicator shall give the person making the motion notice of her/his decision on the motion.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.220. Prehearing Statement.

A. The Adjudicator may require all parties to an adjudication to prepare prehearing statement(s) at a time and in the manner to be established by the Adjudicator. To the extent possible, joint statements should be prepared.

B. Prehearing statement(s) shall, unless otherwise ordered by the Adjudicator, set forth briefly the following matters:

1. Issues involved in the adjudication;
2. Stipulated facts together with a statement that the party (or parties) have communicated or conferred in a good faith effort to reach stipulations to the fullest extent possible;
3. Facts in dispute;
4. Witnesses and exhibits to be presented during the hearing, including any stipulations relating to authenticity of documents and witnesses as experts;
5. A brief statement of applicable law;
6. The conclusion to be drawn; and

7. Estimated time required for presentation of the party's (or parties') case.

C. The Adjudicator may, for good cause shown, permit a party to introduce facts or argue points of law outside the scope of the facts and law outlined in the prehearing statement.

D. Failure to file a prehearing statement, unless a waiver has been granted by the Adjudicator, may result in dismissal of a party from the adjudication, dismissal of a complaint (if any), entering a judgment against the party, or imposition of such other sanctions as may be appropriate in the circumstances.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.221. Prehearing, Settlement, and Other Conferences.

A. With due regard for the convenience of all the parties, the Adjudicator may direct the parties to attend one or more conferences, prior to or during the course of the hearing, when the Adjudicator finds they are warranted. Reasonable notice of the time, place, and purpose of the conference(s) shall be given to the parties and other persons, if any, who are participating or seek to participate in the adjudication. A conference shall be held in person and on the record, unless the Adjudicator concludes that personal attendance by the Adjudicator and the parties is unwarranted or impractical; in this instance, the conference may be held by telephone or other appropriate means.

B. Parties shall come to all conferences fully prepared for a useful discussion of all issues involved in the conference, both procedural and substantive, and authorized to negotiate with respect thereto.

C. The Adjudicator may order that any or all of the following be addressed or furnished before, at, or after, the conference:

1. Motions to intervene and motions to appear as a limited participant;
2. Motions for consolidation or severance of parties or issues in the adjudication;
3. Method of service and filing;
4. Identification, simplification, and clarification of the issues;
5. Requests for amendment of filed documents;
6. Stipulations and admissions of fact and of the content and authenticity of documents;
7. A discussion of the desirability of limiting and grouping witnesses, so as to avoid duplication of expert witnesses;
8. Disclosure of the names of expert and other witnesses (together with a brief narrative summary of their expected testimony) and of documents or other physical exhibits that are intended to be introduced into evidence or used as testimonial aids;
9. A recommended schedule for the exchange of final witness lists, prepared testimony, and documents, with due regard for the convenience of the parties;
10. Requests for official notice and that particular matters be resolved by reliance upon the agency's substantive standards, regulations, and rules;
11. Offers of settlement;
12. Proposed date, time, and place of the hearing, with due regard for the convenience of all parties; and
13. Such other matters as may aid in the disposition of the adjudication.

D. A conference shall be recorded, unless otherwise directed by the Adjudicator, and made part of the adjudication record.

E. The Adjudicator may dispose of any procedural matters on which (s)he is authorized to rule during the course of the adjudication at the conference.

F. Actions taken as a result of a conference shall be reduced to writing, unless the Adjudicator concludes that a stenographic transcript will suffice or the Adjudicator elects to make a statement on the record at the hearing summarizing the actions taken.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.230. Discovery: General.

A. Following the initiation of the adjudication, discovery shall begin at, and be completed by, such time as the Adjudicator directs.

B. Unless otherwise ordered by the Adjudicator, parties may obtain discovery by one or more of the following methods:

1. Interrogatories (R. 9–100.233);
2. Depositions upon oral examination or written questions (R. 9–100.234);
3. Requests for production of documents or things for inspection or other purposes (R. 9–100.235);
4. Requests for admission (R. 9–100.236); or
5. Any other method permitted by the Adjudicator.

C. Unless the Adjudicator upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, the methods of discovery may be used in any sequence. The fact that a party is conducting discovery shall not operate to delay any other party's discovery.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.231. Discovery: Scope.

A. Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the adjudication, whether it relates to the case or defense of the party seeking discovery or to the case or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things, and the identity and location of persons having knowledge of discoverable matter.

B. It is not ground for objection that the information sought will be inadmissible at the hearing if such information appears reasonably calculated to lead to the discovery of admissible evidence.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.232. Discovery: Supplementation of Response.

A party who has responded to a request for discovery with a response that was complete when made is under a duty to supplement the response to include information thereafter acquired, as follows:

A. A party is under a duty to supplement in a timely fashion a response with respect to any question directly addressed to:

1. the identity and location of persons having knowledge of discoverable matters, and
2. the identity of each person expected to be called as an expert witness, the subject matter on which the person is expected to testify, and the substance of the testimony.

B. A party is under a duty to amend in a timely fashion a response if the party later obtains information upon the basis of which:

1. the party knows the response was incorrect when made, or
2. the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

C. An additional duty to supplement responses may be imposed by order of the Adjudicator or by agreement of the parties or prior to the hearing through new requests for supplementation of prior responses.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.233. Interrogatories.

A. Any party may serve upon any other party written interrogatories. However, the total number of general interrogatories to any one party may not exceed fifty (50) questions including subparts, except by permission of the adjudicator for good cause shown.

B. Each interrogatory shall be answered separately and fully in writing under oath or affirmation, unless it is objected to, in which event the reasons for the objection shall be stated in lieu of an answer. The answers are to be signed by the person making them, and the objections signed by the attorney or

other representative making them. Answers and objections shall be made within thirty (30) days after the service of the interrogatories. The party submitting the interrogatories may move for an order under R. 9-100.239 [Sanctions for Failure to Comply] with respect to any objection or other failure to answer an interrogatory.

C. An interrogatory otherwise proper is not necessarily objectionable merely because an answer to the interrogatory involves an opinion or contention that relates to fact or the application of law to fact, but the Adjudicator may order that such an interrogatory need not be answered until after designated discovery has been completed or until a prehearing conference or other later time.

D. It is a sufficient answer to such interrogatories to specify the records from which the answer may be derived or ascertained where:

1. the answer to an interrogatory may be derived or ascertained from the records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such records, or from a compilation, abstract, or summary based thereon, and
2. the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served.

The party serving the interrogatory shall be afforded reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specification shall include sufficient detail to permit the interrogating party to locate and identify the individual records from which the answer may be ascertained.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.234. Depositions.

A. Notice. Upon written notice to the witness and to all other parties, a party may take the testimony of a witness by deposition and may request the production of specified documents or materials by the witness at the deposition. The notice shall state the purpose and general scope of the deposition; the time and place it is to be taken; the name and address of the person before whom the deposition is to be taken; the name and address of each witness from whom a deposition is to be taken; and a specification of the documents and materials that the witness is requested to produce. The notice shall be not less than ten (10) days before the deposition.

B. Deposition of an Organization. If the deposition of a public or private corporation, partnership, association, or governmental agency is ordered, the organization so named shall designate one or more officers, directors, or agents to testify on its behalf, and may set forth, for each person designated, the matters on which (s)he will testify. The persons so designated shall testify as to matters reasonably known to them.

C. Procedure at Deposition. Depositions may be taken before any disinterested person having power to administer oaths in the location where the deposition is to be taken. Each witness deposed shall be placed under oath or affirmation, and the other parties shall have the right to cross-examine. The witness being deposed may have counsel or another representative present during the deposition. The questions propounded and all answers and objections shall be reduced to writing, read by or to and subscribed by the witness, and certified by the person before whom the deposition was taken. The parties may stipulate, or the Adjudicator may upon motion order, that the testimony at a deposition be recorded by other than stenographic means. The party requesting the deposition shall make appropriate arrangements for necessary facilities and personnel.

D. Deposition conducted other than in person. Depositions may be conducted by telephone if all parties agree. Depositions may also be conducted in accordance with S.C. Rules of Civil Procedure 30H. and 31.

E. Motion to Terminate or Limit Examination. During the taking of a deposition, a party or the witness may request suspension of the deposition on the grounds of bad faith in the conduct of the examination, oppression of the witness or party, or improper questioning or conduct. Upon request for suspension, the deposition will be adjourned. The objecting party or witness must immediately move the Adjudicator for a ruling on the objection(s). The Adjudicator may then limit the scope or manner of taking the deposition; see R. 9-100.237 [Protective Order].

F. Foreign Country Deposition. Where a deposition is taken in a foreign country, it may be taken before a person having power to administer oaths in that location, or before a secretary of an embassy

or legation, consul general, consul, vice consul or consular agent of the United States, or before such other person or officer as may be agreed upon by the parties by written stipulation filed with the Adjudicator.

G. Waiver of Deposing Officer's Disqualification. Objection to taking a deposition because of the disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could have been discovered with reasonable diligence.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.235. Requests for Production of Documents or Things for Inspection or Other Purposes.

A. Any party may serve on any other party a request to produce and/or permit the party, or someone acting on its behalf, to inspect and copy any specified document(s) (i.e., any written, printed, recorded, or graphic matter, regardless of form, characteristic, or medium) or to inspect and copy, test, or sample any tangible things, that contain or may lead to relevant information and that are in the possession, custody, or control of the party upon whom the request is served.

B. Any party may serve on any other party a request to permit entry upon designated property in the possession or control of the party upon whom the request is served for the purpose of inspection, measuring, surveying, photographing, testing, or sampling the property or any designated object or area.

C. Each request shall set forth with reasonable particularity the property to be inspected and shall specify a reasonable time, place, and manner for making the inspection and performing the rebated acts.

D. The party upon whom the request is served shall respond within thirty (30) days after the service of the request. The response shall state, with respect to each item, that inspection and related activities will be permitted as requested, unless there are objections, in which case the reasons for each objection shall be stated.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.236. Requests for Admissions.

A. Any party may serve on any other party a written request for admission of the truth of any matters relevant to the adjudication set forth in the request that relate to statements or opinions of fact or of application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or are known to be, and in the request are stated as being, in the possession of the other party. Each matter of which an admission is requested shall be separately set forth.

1. The matter is admitted unless, within thirty (30) days after service of the request, or within such time as the Adjudicator allows, the party to whom the request is directed serves upon the party requesting the admission, a sworn written answer.

2. The sworn written answer shall specifically:

- a. deny the relevant matter(s) of which an admission is requested;
- b. set forth in detail the reasons why the party truthfully can neither admit nor deny the matter(s) of which an admission is requested; or
- c. state the objections by which some or all of the matters involved are privileged, irrelevant, or otherwise improper in whole or part.

A denial shall fairly meet the substance of the requested admission and when good faith requires that a party qualify her/his answer or deny only part of the matter of which an admission is requested, (s)he shall specify so much of it as is true and qualify or deny the remainder.

3. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless (s)he states that (s)he has made reasonable inquiry and that the information known to, or readily obtainable by, her/him is insufficient.

4. The party who has requested the admission(s) may move to determine the sufficiency of the answer(s) or objection(s). Unless the objecting party sustains her/his burden of showing that the objection is justified, the Adjudicator shall order that an answer be served.

B. Any matter admitted under this rule is conclusively established unless the Adjudicator on motion permits withdrawal or amendment of the admission.

C. Any admission made by a party under this rule is for the purpose of the adjudication and is not an admission by her/him for any other purpose; it may not be used against her/him in any other proceeding.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.237. Discovery: Protective Order.

A. Upon motion by a party or the person from whom discovery is sought, and for good cause shown, the Adjudicator may make any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

1. That the discovery may not be had;
2. That the discovery may be had only on specified terms and conditions, including a designation of the time and/or place;
3. That the discovery may be had only by a method of discovery other than that selected by the seeking party;
4. That particular matters may not be inquired into, or that the scope of the discovery may be limited to particular matters;
5. That discovery may be conducted with no one present except persons designated by the Adjudicator;
6. That a trade secret or other confidential research, development, or commercial information may not be disclosed or may be disclosed only in a designated way or only to designated persons; and
7. That the party or the other person from whom discovery is sought may file specified documents or information under seal to be opened as directed by the Adjudicator.

B. The Adjudicator may permit a party or a person from whom discovery is sought, who is seeking a protective order, to make all or part of the showing of good cause in camera. If such a showing is made, upon motion of the party or the person from whom discovery is sought, an in camera record of the proceedings shall be made. If the Adjudicator enters a protective order, any in camera record of such showing shall be sealed and preserved and made available to SCIAA or to a court in the event of appeal.

C. The Adjudicator may upon motion by a party or by a person from whom discovery is sought, and for good cause shown,

1. restrict or defer disclosure by a party of the name of a witness or, in the case of a SCIAA witness, any prior statement of the witness, and
2. prescribe other appropriate measures to protect a witness.

Any party affected by any such action shall have an adequate opportunity, once learning of the name of the witness and obtaining a narrative summary of expected testimony, or in the case of a SCIAA witness, any prior statement or statements, to prepare for cross-examination and for the presentation of the party's case.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.238. Discovery: Motion to Compel Discovery.

A. If a party or other person upon whom a request for discovery has been served fails to answer a question propounded or to respond adequately, objects to a request, or fails to produce documents or other things for inspection or other purposes, the discovering party may move the Adjudicator for an order compelling discovery in accordance with the request. The motion shall:

1. state the nature of the request;

2. set forth the response or objection of the party or other person upon whom the request was served;
3. present arguments supporting the motion; and
4. attach copies of all relevant discovery requests and responses.

B. The Adjudicator may enter an order compelling discovery in accordance with the request, enter a protective order under R. 9-100.237 [Protective Order], and/or issue sanctions under R. 9-100.239 [Sanctions for Failure to Comply].

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.239. Discovery: Sanctions for Failure to Comply.

If a party fails to provide or permit discovery, the Adjudicator may take such action as is just, including but not limited to the following:

A. Infer that the admission, testimony, document, or other evidence would have been adverse to the party;

B. Order that, for the purposes of the adjudication, the matters regarding which the order was made nor any other designated facts shall be taken to be established in accordance with the claim of the party obtaining the order;

C. Order that the party withholding discovery not introduce into evidence or otherwise rely, in support of any claim or defense, upon documents or other evidence withheld;

D. Order that the party withholding discovery not introduce into evidence, or otherwise use in the hearing, information obtained in discovery;

E. Order that the party withholding discovery not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents, or other evidence would have shown;

F. Order that a filed document, or part of a filed document, or a motion or other submission by the party be stricken, or that decision on the filed documents be rendered against that party, or both; and

G. Exclude the party or representative from the adjudication.

Any such action may be taken by order at any point in the adjudication.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.240. Settlement; Alternative Dispute Resolution.

A. Availability. The parties shall have the opportunity to submit a settlement to the Adjudicator or submit a request for alternative dispute resolution under section D.

B. Form. A settlement shall be in the form of a proposed settlement agreement, a consent order, and a motion for its entry, which shall include the reasons why it should be accepted and shall be signed by the consenting parties or their authorized representatives.

C. Content of Settlement Agreement. The proposed settlement agreement shall contain the following:

1. An admission of all jurisdictional facts;

2. An express waiver of further procedural steps before the Adjudicator or SCIAA, of any right to challenge or contest the validity of the order entered into in accordance with the agreement, and of all rights to seek judicial review or otherwise to contest the validity of the consent order;

3. A statement that the order shall have the same force and effect as an order made after full hearing; and

4. A statement that matters in the pleading, if any, required to be adjudicated have been resolved by the proposed settlement agreement and consent order.

D. Settlement Adjudicator; Alternative Dispute Resolution.

1. The Adjudicator, upon motion of a party or upon her/his own motion, may request the Director of SCIAA to appoint another Adjudicator to conduct settlement negotiations or remit the proceeding to alternative dispute resolution as SCIAA may provide or to which the parties may agree.

The order appointing the Settlement Adjudicator may confine the scope of settlement negotiations to specified issues. The order shall direct the Settlement Adjudicator to report to the Director of SCIAA at specified time periods.

2. If a Settlement Adjudicator is appointed, (s)he shall:

a. convene and preside over conferences and settlement negotiations between the parties and assess the practicalities of a potential settlement,

b. report to the Director of SCIAA describing the status of the settlement negotiations and recommending the termination or continuation of the settlement negotiations, and

c. not discuss the merits of the case with the Director of SCIAA or any other person, or appear as a witness in the case.

3. Settlement negotiations conducted by the Settlement Adjudicator shall terminate upon the order of the Director of SCIAA issued after consultation with the Settlement Adjudicator.

4. No decision concerning the appointment of a Settlement Adjudicator or the termination of the settlement negotiation is subject to review by, appeal to, or rehearing by the Adjudicator or SCIAA.

E. The Adjudicator (or Settlement Adjudicator) may require that the attorney or other representative who is expected to try the case for each party be present and that the parties, or agents having full settlement authority, also be present or available by telephone.

F. No evidence, statements, or conduct in settlement negotiations under this section will be admissible in any subsequent hearing, except by stipulation of the parties. Documents disclosed may not be used in litigation unless obtained through appropriate discovery or subpoena.

G. The Adjudicator (or Settlement Adjudicator) may impose on the parties and persons having an interest in the outcome of the adjudication such other and additional requirements as are necessary for the efficient resolution of the case.

H. The conduct of settlement negotiations shall not unduly delay the hearing.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

III. The Hearing

Comment: The hearing rules deal with scheduling and notice of a hearing, as well as penalties for failure to appear. They outline the rules of evidence to be used in an adjudication, including, but not limited to, admissibility, stipulations, written testimony, exhibits, confidential information and witness fees. They detail where the burden lies in all matters and speak to the closing of the record. This section provides for briefs, closing arguments and lays the groundwork for a proper record of the hearing and the decision of the adjudicator.

9-100.300. Scheduling and Notice of Hearing.

A. The Adjudicator shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Adjudicator shall fix the time, place, and date for the hearing and shall notify all parties of the same.

B. A request for a change in the time, place, or date of the hearing may be granted by the Adjudicator.

C. At any time after commencement of a proceeding, any party may move to expedite the scheduling of a proceeding. A party moving to expedite a proceeding shall:

1. describe the circumstances justifying the expedition, and

2. incorporate in the motion affidavits to support any representations of fact.

Following timely receipt of the motion and any responses, the Adjudicator may expedite schedules for filing documents, prehearing conferences, and the hearing, as appropriate.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.310. Failure of Party to Appear.

A decision may be entered against a party failing to appear at a hearing unless such party shows good cause for the failure to appear.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.320. Evidence: Admissibility.

The Adjudicator shall admit, consider, or exclude evidence in accordance with S.C. Code Ann. Section 1-23-330 and the S.C. Rules of Evidence.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.322. Evidence: Confidential and Sensitive Information.

A. Without limiting the discretion of the Adjudicator to give effect to applicable privileges, the Adjudicator may limit introduction of evidence or issue such protective or other orders that in her/his judgment are required to prevent undue disclosure of classified, confidential, or sensitive matters, which include, but are not limited to, matters of a national security, business, personal, or proprietary nature. Where the Adjudicator determines that information in documents containing classified, confidential, or sensitive matters should be made available to another party, the Adjudicator may direct the party to prepare an unclassified or non-sensitive summary or extract of the original. The summary or extract may be admitted as evidence in the record.

B. If the Adjudicator determines that the procedure described in section A. is inadequate and that classified or otherwise sensitive matters must form part of the record in order to avoid prejudice to a party, the Adjudicator may advise the parties and provide opportunity for arrangements to permit a party or representative to have access to such matters.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.324. Evidence: Stipulations.

The parties may by stipulation in writing at any stage of the proceeding or orally at the hearing agree upon any pertinent facts in the proceeding. Stipulations may be received in evidence before, or at, the hearing and, when received in evidence, shall be binding on the parties to the stipulation.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.325. Evidence: Written Testimony.

To the extent permitted by S.C. Code Ann. Section 1-23-330 and the S.C. Rules of Evidence, the Adjudicator may accept and enter into the record direct testimony of witnesses made by verified written statement rather than by oral presentation at the hearing. Witnesses whose testimony is presented by verified written statement shall be available for cross-examination as may be required.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.326. Evidence: Exhibits and Documents.

A. All exhibits shall be numbered and marked with a designation identifying the sponsor. The original of each exhibit offered in evidence or marked for identification shall be filed and retained in the docket of the proceeding, unless the Adjudicator permits the substitution of copies for the original document. Copies of each exhibit shall be supplied by the sponsoring party to the Adjudicator and to each other party to the proceeding.

B. Unless otherwise directed by the Adjudicator, proposed exhibits to be offered upon direct examination shall be exchanged ten (10) days prior to the hearing. Proposed exhibits not so exchanged in accordance with the Adjudicator's order may be denied admission as evidence. The authenticity of all exhibits submitted or exchanged prior to the hearing, under direction of the Adjudicator, will be deemed admitted unless written objection is filed and served on all parties, or unless good cause is shown for failure to file such written objection.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.327. Evidence: Witness Fees; Oath or Affirmation; Refusal to Testify.

A. Fees. Witnesses, other than employees of a state agency, summoned in an adjudication shall receive the same fees and mileage as witnesses in the courts of South Carolina.

B. Oath or Affirmation. Witnesses shall testify under oath or affirmation.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.328. Burden of Going Forward with Evidence.

The proponent of a factual proposition shall have the burden of introducing evidence to support that proposition.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.329. Burden of Proof.

In all proceedings under this act, the burden of proof shall be by a preponderance of the evidence standard.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.330. Closing of Record.

At the conclusion of the hearing, the record shall be closed unless the Adjudicator directs otherwise. Once the record is closed, no additional evidence shall be accepted except upon a showing that the evidence is material and that there was good cause for failure to produce it in a timely fashion. The Adjudicator shall reflect in the record, however, any approved correction to the transcript.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.340. Proposed Findings; Closing Arguments; Briefs.

Before the Adjudicator's decision and upon such terms that the Adjudicator may find reasonable, any party shall be entitled to file a brief, propose findings of fact and conclusions of law, or do both. At the close of the hearing, the Adjudicator may in her/his discretion hear oral argument. Any brief, proposed findings of fact and conclusions of law, and oral argument shall be included as part of the record.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.350. Record of Hearing.

All hearings shall be recorded. Exhibits shall be incorporated into the record.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.360. Decision of Adjudicator.

A. The Adjudicator shall prepare a decision containing:

1. findings and conclusions, and the reasons or bases therefor, on all material issues of fact, law, or discretion presented on the record;
2. an order as to the final disposition of the case, including relief, if appropriate;
3. the date upon which the decision will become effective [e.g., days after issuance]; and
4. a statement of further right to appeal.

B. The decision of the Adjudicator shall be based upon a consideration of the whole record.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

IV. Appeal

Comment: The Appeal section provides detailed instructions on the parties' rights to appeal and gives mechanisms for such appeals. They provide for interlocutory review of certain orders and state the method to petition for review. They detail what should be included in appellate briefs and the form of these. The rules provide the basis for oral arguments and a final decision. The final rule states the method to apply for reconsideration of the decision.

9–100.400. Interlocutory Review.

A. Application for interlocutory review shall be made to the Adjudicator. The application shall not be certified to the Office of the Director of SCIAA except when the Adjudicator determines that:

1. the ruling involves a dispositive question of law or policy about which there is substantial ground for difference of opinion; or

2. an immediate ruling will materially advance the completion of the proceeding; or
3. the denial of an immediate ruling will cause irreparable harm to a party or the public.

B. Any application for interlocutory review shall:

1. be filed with the Adjudicator within five (5) days after the Adjudicator's ruling;
2. designate the ruling or part thereof from which appeal is being taken;
3. set forth the ground on which the appeal lies; and
4. present the points of fact and law relied upon in support of the position taken.

Any party that opposes the application may file a response within five (5) days after service of the application.

C. Proceedings Not Stayed. The filing of an application for review and the grant of review shall not stay proceedings before the Adjudicator unless (s)he or SCIAA shall so order. SCIAA will not consider the motion for a stay unless the motion shall have first been made to the Adjudicator.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.410. Petitions for Review.

A. Any person adversely affected or aggrieved by the Adjudicator's decision may file with SCIAA a petition for review within thirty (30) days after issuance of the Adjudicator's initial decision. Two or more parties may join in the same petition.

B. A petition for review, no more than five (5) pages in length, shall be filed only upon one or more of the following grounds:

1. A finding of material fact is not supported by substantial evidence;
2. A necessary legal conclusion is erroneous;
3. The decision is contrary to law or to the duly promulgated rules or decisions of SCIAA;
4. A substantial question of law, policy, or discretion is involved; or
5. A prejudicial error of procedure was committed.

C. Each issue shall be plainly and concisely stated and shall be supported by citations to the record when assignments of error are based on the record, and by statutes, regulations, cases, or other principal authorities relied upon. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law not presented to the Adjudicator.

D. A statement in opposition to the petition for review may be filed within thirty (30) days after the date on which petitions are due.

E. Review by SCIAA shall not be a matter of right but within the sound discretion of SCIAA. A petition not granted within ninety (90) days after the issuance of the Adjudicator's decision is deemed denied.

F. SCIAA, at any time within forty-five (45) days after the issuance of the Adjudicator's decision, may review the decision on its own motion. Where SCIAA, by regulation or order, provides for the issuance of a recommended decision, no petition for review is required.

G. A petition for review under this section is, under S.C. Code Ann. Section 1-23-380, a prerequisite to the seeking of judicial review of the final agency action. The effect of filing a petition for review does not stay an agency decision, in accordance with Section 1-23-380.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9-100.420. Appellate Briefs.

A. Unless SCIAA directs otherwise, a party shall file a brief in support of its petition for review within thirty (30) days after SCIAA grants the petition. If a petitioner fails to file a timely brief, the order granting review may be vacated. Other parties may file any briefs they wish considered by SCIAA within ten (10) days after the petitioner's brief is served. If SCIAA orders review on its own motion, all parties shall file any briefs they wish considered by SCIAA within thirty (30) days of the order.

B. The Form and content of briefs shall be governed by South Carolina Appellate Court Rules, namely Rule 207.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.430. Oral Argument.

SCIAA may permit oral argument in its discretion. The order scheduling a case for oral argument will contain the allotment of time for each party and order of presentation for oral argument before SCIAA.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.440. Final Decision.

A. If no petitions for review are filed, and SCIAA has not taken review of the Adjudicator's decision on its own initiative, the decision shall become effective and will be the final decision of SCIAA forty-six (46) days after issuance.

B. When a case stands submitted for final decision on the merits, SCIAA will dispose of the issues presented by entering an appropriate order which will include findings and conclusions and the reasons or bases therefor. In appropriate cases, SCIAA may simply affirm the decision.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.

9–100.450. Reconsideration.

A. Any party to a proceeding may file a motion for reconsideration of a final order issued by SCIAA.

B. Unless the time is shortened or enlarged by SCIAA, motions for reconsideration shall be filed within thirty (30) days after service of the final order issued by SCIAA.

C. A motion for reconsideration shall be no more than 5 pages and shall state, briefly and specifically, the matters of record alleged to have been erroneously decided, the ground(s) relied upon, and the relief sought. No responses to motions for reconsideration shall be filed unless requested by SCIAA.

HISTORY: Added by State Register Volume 22, Issue No. 6, Part 1, eff June 26, 1998.