

Judicial Council of California • Administrative Office of the Courts

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INVITATION TO COMMENT

SPR12-05

Title	Action Requested
Appellate Procedure: Transmission of Administrative Records on Appeal	Review and submit comments by Friday, June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 8.123	January 1, 2013
Proposed by	Contact
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	Heather Anderson, 415-865-7691 heather.anderson@jud.ca.gov

Executive Summary and Origin

This proposal is intended to provide costs savings and efficiencies for superior courts by relieving the clerk of responsibility for transmitting to the Court of Appeal an administrative record that was admitted in evidence, refused, or lodged in the superior court and subsequently designated for inclusion in the record on appeal if that record was returned to a party. This proposal is based on a suggestion submitted by the California Appellate Clerks Association.

Background

Rule 8.123 of the California Rules of Court addresses records of administrative proceedings that were admitted in evidence, refused, or lodged in the superior court and that are subsequently designated for inclusion in the record in a civil appeal in the Court of Appeal. Under the current rule, when the superior court returns an administrative record to a party and that administrative record is subsequently designated for inclusion in the record on appeal, the party must send the record to the superior court and the superior court must submit it to the Court of Appeal. The rule also requires the Court of Appeal to return administrative records to the superior court when remittitur is issued, and the superior court is then responsible if an administrative record needs to be returned to a party. Performing these responsibilities utilizes superior court clerk time and resources.

The Proposal

This proposal is intended to provide significant cost savings and efficiencies for the superior courts by alleviating the superior court clerk of responsibilities associated with administrative records that were returned to a party. It would provide that when the superior court has returned

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an administrative record to a party and that administrative record is subsequently designated for inclusion in the record on appeal, the party to whom an administrative record has been returned must send that administrative record directly to the Court of Appeal, and that the Court of Appeal must return that record directly to that party on issuance of remittitur. This is similar to the procedure in rule 8.224 for transmission to the Court of Appeal of exhibits that were returned to a party.

Under this proposal, rule 8.123 will require that a party make the designated administrative record available to the other parties in the case for copying within 15 days after the notice designating the record on appeal is served and lodge the administrative record with the Court of Appeal when filing its first brief in the case.

Alternatives considered

The committee considered not including a provision requiring that the party to whom an administrative record is returned provide other parties with access to that record. If this alternative approach were taken, other parties would be able access the administrative record after it was lodged with the Court of Appeal. However, the committee decided against this approach because it might make it difficult for other parties to timely prepare their briefs and would create burdens for the Court of Appeal in providing parties with access to such records.

Implementation Requirements, Costs, and Operational Impacts

This proposal should not impose significant implementation burdens on the superior courts or Courts of Appeal and should provide significant cost savings for the superior courts.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Should the rule include additional procedures, similar to those in rule 8.124, to address situations in which the party to who an administrative record was returned does not provide other parties with appropriate access to this record?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts? For example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management system, or modifying case management system.
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Rule 8.123 of the California Rules of Court would be amended, effective January 1, 2013, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 2. Record on Appeal

Rule 8.123. Record of administrative proceedings

(a) Application

This rule applies if the record of an administrative proceeding was admitted in evidence, refused, or lodged in the superior court.

(b) Designation

- (1) An appellant's notice designating the record on appeal under rule 8.121 that requests a record of an administrative proceeding be transmitted to the reviewing court must identify the administrative record by the title and date or dates of the administrative proceedings.
- (2) If an appellant does not request that an administrative record admitted in evidence, refused, or lodged in the superior court be transmitted to the reviewing court, the respondent, within 10 days after the appellant serves its notice designating the record on appeal, may serve and file in the superior court a notice requesting that this administrative record be transmitted to the reviewing court.

~~(d)~~(c) Transmittal to the reviewing court

Except as provided in (d), ~~If~~ any administrative record is designated by a party, the superior court clerk must transmit the original administrative record with any clerk's or reporter's transcript sent to the reviewing court under rule 8.150. If the appellant has elected under rule 8.121 to use neither a clerk's transcript nor a reporter's transcript, the superior court clerk must transmit any administrative record designated by a party to the reviewing court no later than 45 days after the respondent files a designation under (b)(2) or the time for filing it expires, whichever first occurs.

~~(e)~~(d) Administrative records returned to parties

If the superior court has returned a designated administrative record to a party, the party in possession of the administrative record must deliver it to the superior court clerk make that record available to the other parties in the case for copying within 15 days after the notice

designating the record on appeal is served and lodge it with the clerk of the Court of Appeal at the time the first brief is filed by the party in possession of the record.

(e) Return by reviewing court

On request, the reviewing court may return an administrative record to the superior court or, if the record was lodged by a party under (d), to the lodging party. When the remittitur issues, the reviewing court must return any administrative record to the superior court or, if the record was lodged by a party under (d), to the lodging party.