

**JUDICIAL COUNCIL OF CALIFORNIA  
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue  
San Francisco, California 94102-3688

**Report**

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee  
Hon. Dennis M. Perluss, Chair  
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DATE: August 3, 2009

SUBJECT: Administrative Record in CEQA Actions (adopt Cal. Rules of Court, rules 3.1365– 3.1368) (Action Required)

Issue Statement

Currently, no statewide rules exist concerning the format or organization of the administrative record in actions brought under the California Environmental Quality Act (CEQA). Such records, which are the sole factual basis for the court's review in CEQA cases at both the trial and appellate court levels, are frequently voluminous and can be physically and organizationally challenging for a court to handle. Last year, when a rule providing a standardized format for the paper version of the administrative record was circulated for public comment, many commentators requested that a similar rule be developed for an electronic version of the record. This proposal provides rules for both paper and electronic versions of the record.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2010, adopt rules 3.1365– 3.1368 to provide a standardized format for paper and electronic versions of the administrative record in CEQA actions.

The text of the proposed rules is attached at pages 5–8.

Rationale for Recommendation

Actions brought under CEQA seek judicial review of a decision by a public agency approving an Environmental Impact Report (EIR) or determining that a project does not require either an EIR or any other environmental review. The challenge normally takes the form of either an administrative mandamus action under Code of Civil Procedure

section 1094.5 or a traditional mandamus action under Code of Civil Procedure section 1085. Under either statute, the trial court must review an administrative record of the proceedings of the public agency relating to its approval of the project, which is lodged with the court by the public agency, or more commonly, one of the parties. Because the statutory requirements for the content of the administrative record are very broad, the record is frequently voluminous, ranging from a few dozen pages for even the smallest project to many hundreds of pages for most projects and to tens of thousands of pages for the largest projects.

It is difficult to physically access and review such a voluminous record when it has not been adequately organized and indexed. Currently, there are no statewide rules addressing the administrative record and thus no rule requiring that an index be included with the record, nor any rules about how the record should be organized. The lack of an adequate index for a record that consists of hundreds or thousands of pages thwarts effective legal review. The proposed rules would provide a statewide standard to facilitate the court's review and to assure that the paper administrative record remains physically intact throughout trial court and appellate court review.

Commentators who asked that rules be developed allowing an electronic version of the record pointed out the benefits that would result, including the reduction of time spent by the parties in handling, organizing, and producing the record; the substantially decreased copying costs for all; and the increased ease for the courts as well as the parties in storing, handling, and retrieving information from the record once lodged.

Rule 3.1365 governs the form and format of the administrative record lodged with the court, whether it is a paper or electronic version. The rule addresses the order of documents, the type of index required, and the appendix of excerpts. Rule 3.1366 governs lodging and service of the record. It provides that if a party elects or is ordered to prepare an electronic version of the record, a court may require the party to lodge one copy of the paper record.

Under rule 3.1367, the electronic version of the administrative record must be created in portable document format (PDF) or another format for which the software for creating and reading documents is in the public domain or generally available at a reasonable cost. It must be divided into a series of electronic files and include electronic bookmarks, similar to index tabs, that identify each part of the record and the volume and page numbers contained in each. The electronic record must be contained on a CD-ROM, DVD, or other medium in a manner that cannot be altered and must be capable of full text searching. Any document for which it is not feasible to create an electronic version may be provided in paper format only.

Under rule 3.1368, the paper format of the administrative record must use recycled paper and both sides of each page.<sup>1</sup> When the earlier version of the rules circulated last year, many commentators suggested use of both sides of each page to reduce environmental and economic costs. Rule 3.1368 also addresses binding the record and use of multiple volumes that state the page numbers included in each.

#### Alternative Actions Considered

The committee considered proposing a master rule that would address the organization and content of the paper record, followed by a rule that would permit the use of an electronic record corresponding to the paper record. At the request of the Court Technology Advisory Committee, however, the committee modified the proposed rules so that the first rule in the series applies to both electronic and paper records and the rules as a whole do not demonstrate a preference for the paper record.

#### Comments From Interested Parties

The proposal was circulated for public comment during the spring cycle. Six entities submitted comments. The commentators were three superior courts, the legal research department and self-help program of another superior court, a county bar association, and the State Bar of California Committee on Administration of Justice (CAJ). All either agreed with the proposal or agreed if it were modified. The comment chart is attached at pages 9–14.

The Orange County Bar Association suggested that rather than having separate groupings for staff reports and transcripts and minutes of hearings, it would be more logical if all of the materials for each decisionmaking, subordinate, and recommending body be grouped together. For example, planning commission staff reports and minutes would be grouped together with the staff report first and all other documents related to the planning commission following in chronological order, followed by the transcript or minutes. Where a body holds multiple hearings, they would be included in a single grouping for that body in chronological order. Committee members with experience in CEQA actions believe that organizing the record in the manner suggested by the Orange County Bar Association would not make any difference as the record is reviewed based on citations in the briefs. The committee therefore declined to make this change.

CAJ provided several comments, many of which improved the language of the rule. For example, CAJ suggested that “with the documents” be deleted as superfluous from “[t]he

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<sup>1</sup> The general rules that address the form and format of paper, rules 2.100 through 2.117, apply only to papers *filed* in the trial court; the administrative record is lodged in the trial court. When lodged, it is typically contained in three-ring binders or bound on the left side. Therefore, the difficulty of reading the second page of a double-sided document is reduced or eliminated. Unlike a brief, the administrative record is not newly created by the party who prepares and lodges the record. That party lodges the record that exists and is not able to ensure that the type size is no smaller than 12 points (rule 2.104) or in a particular typeface (rule 2.105). Proposed rule 3.1368, therefore, does not refer to or incorporate provisions of these rules.

administrative record must be organized with the documents in the following order, as applicable” in rule 3.1365(a)(1). This change has been made. Concerning whether rule 3.1365 should require that documents be organized by specified document type as provided in the proposed rule or in chronological order, CAJ commented that it supports the rule as written, requiring documents to be organized by specified type. CAJ added that the documents specified in the rule are those that are most likely to be needed by the parties and the court, that they are in a logical sequence for review, and that the rule allows for a different order if needed.

Finally, CAJ believes that similar rules applying to other actions seeking review of final orders in administrative proceedings would be useful. The subcommittee will consider the need for such rules and develop them if appropriate.

None of the other commentators provided specific comments.

#### Implementation Requirements and Costs

None are anticipated. The rules are expected to save parties’ resources by reducing the time spent organizing, creating, and serving the administrative record if the parties use an electronic record. Similarly, courts will be able to access the record in electronic form more easily than the paper version and will have reduced storage needs.

Attachments

Rules 3.1365, 3.1366, 3.1367, and 3.1368 of the California Rules of Court would be adopted by the Judicial Council, effective January 1, 2010, to read:

1 **Chapter 7. Petitions Under the California Environmental Quality Act**

2  
3 **Rule 3.1365. Form and format of administrative record lodged in a CEQA**  
4 **proceeding**

5  
6 **(a) Organization**

7  
8 (1) *Order of documents*

9  
10 Except as permitted in (a)(3), the administrative record must be  
11 organized in the following order, as applicable:

12  
13 (A) The Notice of Determination;

14  
15 (B) The resolutions or ordinances adopted by the lead agency  
16 approving the project;

17  
18 (C) The findings required by Public Resources Code section 21081,  
19 including any statement of overriding considerations;

20  
21 (D) The final environmental impact report, including the draft  
22 environmental impact report or a revision of the draft, all other  
23 matters included in the final environmental impact report, and  
24 other types of environmental impact documents prepared under the  
25 California Environmental Quality Act, such as a negative  
26 declaration, mitigated negative declaration, or addenda;

27  
28 (E) The initial study;

29  
30 (F) Staff reports prepared for the administrative bodies providing  
31 subordinate approvals or recommendations to the lead agency, in  
32 chronological order;

33  
34 (G) Transcripts and minutes of hearings, in chronological order; and

35  
36 (H) The remainder of the administrative record, in chronological order.

37  
38 (2) *List not limiting*

39

1           The list of documents in (1) is not intended to limit the content of the  
2           administrative record, which is prescribed in Public Resources Code  
3           section 21167.6(e).

4  
5           (3) *Different order permissible*

6  
7           The documents may be organized in a different order from that set out  
8           in (1) if the court so orders on (i) a party's motion, (ii) the parties'  
9           stipulation, or (iii) the court's own motion.

10  
11           (4) *Oversized documents*

12  
13           Oversized documents included in the record must be presented in a  
14           manner that allows them to be easily unfolded and viewed.

15  
16           (5) *Use of tabs or electronic bookmarks*

17  
18           The administrative record must be separated by tabs or marked with  
19           electronic bookmarks that identify each part of the record listed above.

20  
21           **(b) Index**

22  
23           A detailed index must be placed at the beginning of the administrative record. The  
24           index must list each document in the administrative record in the order presented,  
25           or in chronological order if ordered by the court, including title, date of the  
26           document, brief description, and the volume and page where it begins. The index  
27           must list any included exhibits or appendices and must list each document  
28           contained in the exhibit or appendix (including environmental impact report  
29           appendices) and the volume and page where each document begins. A copy of the  
30           index must be filed in the court at the time the administrative record is lodged with  
31           the court.

32  
33           **(c) Appendix of excerpts**

34  
35           A court may require each party filing a brief to prepare and lodge an appendix of  
36           excerpts that contains the documents or pages of the record cited in that party's  
37           brief.

1 **Rule 3.1366. Lodging and service**

2  
3 The party preparing the administrative record must lodge it with the court and  
4 serve it on each party. A record in electronic format must comply with rule  
5 3.1367. A record in paper format must comply with rule 3.1368. If the party  
6 preparing the administrative record elects or is ordered to prepare an electronic  
7 version of the record, (1) a court may require the party to lodge one copy of the  
8 record in paper format, and (2) a party may request the record in paper format and  
9 pay the reasonable cost or show good cause for a court order requiring the party  
10 preparing the administrative record to serve the requesting party with one copy of  
11 the record in paper format.

12  
13  
14 **Rule 3.1367. Electronic format**

15  
16 **(a) Requirements**

17  
18 The electronic version of the administrative record lodged in the court in a  
19 proceeding brought under the California Environmental Quality Act must be:

- 20  
21 (1) In compliance with rule 3.1365;  
22  
23 (2) Created in portable document format (PDF) or other format for which  
24 the software for creating and reading documents is in the public domain  
25 or generally available at a reasonable cost;  
26  
27 (3) Divided into a series of electronic files and include electronic  
28 bookmarks that identify each part of the record and clearly state the  
29 volume and page numbers contained in each part of the record;  
30  
31 (4) Contained on a CD-ROM, DVD, or other medium in a manner that  
32 cannot be altered; and  
33  
34 (5) Capable of full text searching.

35  
36 The electronic version of the index required under rule 3.1365(b) may include  
37 hyperlinks to the indexed documents.

38  
39 **(b) Documents not included**

40  
41 Any document that is part of the administrative record and for which it is not  
42 feasible to create an electronic version may be provided in paper format only. Not

1 feasible means that it would be reduced in size or otherwise altered to such an  
2 extent that it would not be easily readable.

3  
4  
5 **Rule 3.1368. Paper format**

6  
7 **(a) Requirements**

8  
9 In the paper format of the administrative record lodged in the court in a proceeding  
10 brought under the California Environmental Quality Act:

11  
12 (1) The paper must be recycled;

13  
14 (2) Both sides of each page must be used;

15  
16 (3) The paper must be opaque, unglazed, white or unbleached, 8 ½ by 11  
17 inches, and of standard quality no less than 20-pound weight, except that  
18 maps, charts, and other demonstrative materials may be larger; and

19  
20 (4) Each page must be numbered consecutively at the bottom.

21  
22 **(b) Binding and cover**

23  
24 The paper format of the administrative record must be bound on the left margin or  
25 contained in three-ring binders. Bound volumes must contain no more than 300  
26 pages, and binders must contain no more than 400 pages. If bound, each page must  
27 have an adequate margin to allow unimpaired readability. The cover of each  
28 volume must contain the information required in Rule 2.111, be prominently  
29 entitled “ADMINISTRATIVE RECORD,” and state the volume number and the  
30 page numbers included in the volume.

31  
32  
33 **Chapter 7 8. Other Civil Petitions**

## SPR09-16

### Administrative Record in CEQA Actions (adopt Cal. Rules of Court, rules 3.1365, 3.1366, 3.1367, and 3.1368)

All comments are verbatim unless indicated by an asterisk (\*).

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Legal Research Department and Self-Help Program Superior Court of San Bernardino County	A	No specific comment.	No response necessary.
2.	Orange County Bar Association By Michael G. Yoder, President PO Box 6130 Newport Beach	AM	To make administrative records (especially hard copy records) more accessible and user friendly, it is suggested that rather than having separate groupings for staff reports and transcripts and minutes, it would be more logical if all of the materials for each decision-making, subordinate and recommending body be grouped together so that, for example, Planning Commission staff reports and minutes would be grouped together with the staff report first and all other documents related to the planning commission following in chronological order, followed by the transcript or minutes. Where a body holds multiple hearings, they would be included in a single grouping for that body in chronological order. There would be a similar package for each subordinate or recommending body. The groupings for subordinate or recommending bodies would be sequenced chronologically. It seems simpler to have everything for each separate body in a single location for ease of review and reference than having to move between separate sections for staff reports and transcripts since they are typically related both by time and subject matter.	The committee declined to make this change because members believe anyone reviewing the record will be referred to the proper pages by citations to the record contained in the briefs and the committee prefers organization the record in chronological order by type of document
3.	State Bar of California	AM	This proposal originated with CAJ's	

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
	<p>Committee on Administration of Justice 180 Howard Street San Francisco</p>		<p>recommendation that consideration be given to adopting statewide rules governing the format and organization of the administrative record required in CEQA actions. Representatives of CAJ were involved in the development of the original proposal. The proposal now addresses the record in an electronic form. CAJ continues to support this proposal, but has the following suggestions:</p> <ol style="list-style-type: none"> <li>1. In rule 3.1365(a)(1), in the first sentence, CAJ suggests that the words “with the documents” be deleted as the words appear to be superfluous.</li> <li>2. With regard to rule 3.1365(a)(3), CAJ had considerable discussion as to whether the parties should be allowed to stipulate to a different order of documents without a court order. CAJ believes that while the parties should be able to enter into such a stipulation, an order of the court should be required, approving the stipulation. CAJ believes that the court should retain its ability and discretion to manage the CEQA proceeding, including the format of the record. CAJ therefore suggests that rule 3.1365(a)(3) provide as follows: “The documents may be organized in a different order from that set out in (1) if the court so orders upon (i) the motion of a party, (ii) the parties’ stipulation, or (iii) the court’s</li> </ol>	<p>The committee agrees and this change has been made.</p> <p>The committee agrees and this change has been made.</p>

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**Administrative Record in CEQA Actions** (adopt Cal. Rules of Court, rules 3.1365, 3.1366, 3.1367, and 3.1368)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>own motion.”</p> <p>3. In rule 3.1365(a)(5), CAJ suggests that the words “any other included documents” be deleted. It appears that the tabs or bookmarks identify “each part of the record listed above,” and that any other documents would be included pursuant to rule 3.1365(a)(1)(H) (“The remainder of the administrative record, in chronological order”), so there would be no need for additional catchall language in (a)(5).</p> <p>4. In rule 3.1365(b), CAJ suggests the comma before the words “in the order presented” be deleted and that a comma be added after that phrase.</p> <p>5. In rule 3.1366, CAJ suggests that the first sentence be amended to read as follows: “The party preparing the administrative record must lodge it with the court and serve <del>all parties</del> <u>a copy of the administrative record on each party.</u>” This would make it clear that each party is entitled to service of a copy of the record.</p> <p>CAJ also suggests that the rule should provide three, rather than two, options, as follows: “If the party preparing the administrative record elects or is ordered to prepare an electronic version of the record (1) a court may require the party to lodge</p>	<p>The committee agrees and this change has been made.</p> <p>The committee agrees and this change has been made.</p> <p>The committee agrees in part and the rule has been modified to add “it on each party” after “serve.”</p> <p>The committee believes that the rule as drafted provides the three options. It is intentionally written to require a party that wants a paper record to request it.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>one copy of the record in paper format, <del>and (2) a party may request the record in paper format and pay the reasonable cost or show good cause for a court order requiring the party preparing the administrative record to serve the requesting party with one copy of the record in paper format (2) the party preparing the record must serve on any other party, upon request and payment of the reasonable cost of making the copy, a copy of the record in paper format, and (3) the court for good cause may order the party preparing the record to serve on another party, at no cost to the requesting party, a copy of the record in paper format.”</del></p> <p>6. CAJ suggests that proposed rule 3.1367(a)(4) be amended to read as follows: “Contained on a CD-ROM, DVD, or other medium <u>in a manner</u> that cannot be altered.” The medium itself can be altered (by physically breaking it, for example) but the files contained on the medium should be unalterable.</p> <p>7. CAJ believes that the word “superior” should be deleted from rules 3.1367(a) and 3.1368(a), as the Rules consistently use the term “court” rather than “superior court” and there seems to be no reason for the different term here.</p> <p>In response to the Advisory</p>	<p>The committee agrees and the rule has been modified accordingly, as this is what was intended.</p> <p>The committee agrees and this change has been made.</p> <p>The comment is noted with appreciation for</p>

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**Administrative Record in CEQA Actions** (adopt Cal. Rules of Court, rules 3.1365, 3.1366, 3.1367, and 3.1368)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
			<p>Committee’s request for comment on whether the order of the documents should be by specified document type, as provided in the proposed rule, or in chronological order. CAJ supports the rule as written, providing documents by specified type. CAJ believes that the documents specified in the rule are those that are most likely to be needed by the parties and the court and that they are in a logical sequence for review. The rule appropriately allows for a different order for the documents to be presented if the need arises.</p> <p>In response to the Advisory Committee’s request for comment on whether similar rules should be adopted that apply to other actions seeking review of final orders in administrative proceedings, CAJ believes that such rules would be useful. Rules similar to those proposed with regard to CEQA concerning indexing, lodging and service, the allowance and format of electronic record, and the paper format provisions would be valuable in any proceedings that review final orders in administrative proceedings. CAJ believes, however, that any such rules should allow the record to be adapted to fit the particular needs of a particular type of proceeding.</p>	<p>addressing this issue.</p> <p>The committee will consider additional rules in the future.</p>

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
4.	Superior Court of Los Angeles County 111 N. Hill Street Los Angeles	A	No specific comment.	No response necessary.
5.	Superior Court of Riverside County	A	Huge benefit to court; housing administrative records can be very time consuming in terms of accessing records and returning to the submitting party i.e. phone calls/arrangements for pick-up.	The committee acknowledges this benefit of the rule.
6.	Superior Court of San Diego County By Michael M. Roddy, Executive Officer County Courthouse, 220 West Broadway San Diego	A	No additional comments.	No response necessary.