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Administrative Appeals—An Assessment of the New Practice Book Rules

By Ira W. Bloom

Over five years ago, an effort began to update and streamline the manner in which records from administrative hearings are prepared and filed with the court. These efforts culminated in the addition of Section 14-7B to the Connecticut Practice Book, effective January 1, 2012. With over three years of implementation, it is time for an assessment of these new rules and a discussion as to whether further changes are needed. The Connecticut Bar Association Planning & Zoning Section began such a review at a recent meeting.

The central premise behind the new rules was that instead of automatically filing with the court every single document received into the record of a land use hearing, the court and the parties would establish which items in the record would be transmitted to the court—presumably a reduced number of items. The reduced filings with the court would be expected to bring relief to judges, court personnel and lawyers alike. Electronic filings of the record, while not required yet, would at least be encouraged. Even town agency staffs, who usually bear the burden of preparing the papers and the transcript, would find relief, the new rules promised.

The new Practice Book rules required the filing with the parties of a "certified list of the papers in the record" within 30 days of the return date. Subsequently, the rules call for "the court and the parties" to establish "which of the contents of the record are to be transmitted" to the court by reviewing the "certified list of the papers in the record." More often this is completed only by the attorneys in the administrative appeal, who are expected to review the "certified list of the papers in the record" and decide on the actual papers to be "transmitted" to the court. A scheduling order is established, as has been customary, and the "board or agency" then transmits to the court and all parties the "designated contents of the record" established by the parties (i.e., the agreed-upon *reduced* contents of the record). Again, while the rules at this time do not require e-filing of the transmitted "designated contents of the record," the new rules certainly contemplated heading in that direction. The benefits to all—less paper and more logic in the overall process—seemed apparent. But is it working as expected?

The reports from practitioners around the state are mixed. A recent Planning and Zoning Section meeting, supplemented by direct inquiries I made to various attorneys, revealed only partial compliance with the new rules. The following is a summary:

a) The early review by the attorneys of the "certified list of the papers in the record" is the source of numerous problems. This "certified list" does not always get sufficiently shortened either, because the attorneys reviewing the list are unfamiliar with what happened in the proceeding (a frequent occurrence for attorneys retained after the public hearing or municipal attorneys who did not attend the public hearing) or because one of the attorneys, perhaps unfamiliar with the new rules, is simply reluctant to agree at the outset to any reduction of papers (even though the rules allow for use of any document later as long as it is on the original "certified list of the papers in the record"). These problems are perhaps predictable. Many practitioners

are unfamiliar with these new procedures and the importance of reviewing at an early stage the "certified list" and "designating" the contents of the record to be actually transmitted. On a positive note, several courts recently seem to be emphasizing the requirements in Practice Book Section 14-7B by requiring a conference to review the "certified list" if the parties are unable to do it themselves.

b) The actual "transmittal," or filing, with the court of the "designated contents of the record" appears only marginally changed from past practice in many areas of the state, with large boxes of papers still quite common. Although there are some reports of reduced papers and even complete electronic filings in select situations, in many cases a large package of printed documents constituting the return is still filed with the court. Why the reluctance to reduce the volume of paper and increase the level of e-filing? One answer comes from the agency staffs themselves, who frankly find it quicker just to put everything into the copy machine than to sort, isolate, and e-file selected documents. Many lawyers (and even a few judges) prefer to have a full printed copy of the record with which to work. All of these understandable preferences detract from full compliance with the new rules.

c) A positive development is the new Land Use Docket in Hartford under the direction of the Hon. Marshall Berger. The Land Use Docket accepts select land use appeals from courts throughout the state. This particular court, largely due to Judge Berger's participation in the development of the new rules, follows the new rules carefully and offers land use practitioners the efficiency and expertise in this area that we have been requesting.

Are changes needed? The recent Connecticut Bar Association Planning and Zoning Section discussed some possible modifications. Attorney Amy Souchuns, chair of the section, has appointed a committee to review further changes to the 2012 new rules to address these concerns. One suggestion under examination, offered by Attorney Matt Ranelli and me, is as follows: Produce the "certified list of the papers" as the existing new rules require. Boards or agencies would then provide complete sets of the record to the parties only, and even that could still be reduced by agreement of the parties. When the attorneys write their briefs, they would attach a set of those exhibits from the record that they want the judge to review. Those sets of exhibits would be the *only* portions of the record provided to the court (unless the judge desires to see other items from the record). The briefs and sets of exhibits prepared by the lawyers *would all be e-filed*. There would be no paper filing at all (i.e., no box of the entire set of papers). Status conferences would be conducted by telephone or other electronic means. Will this result in a simpler and clearer approach, with less paper and more efficiency? As the year progresses, there will be opportunities to provide your input through the Planning and Zoning Section. **CL**