

ADMINISTRATIVE LAW AND AGENCY PRACTICE SECTION



The District of Columbia Bar

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Sections Manager

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SUMMARY OF COMMENTS

The Section on Administrative Law and Agency Practice recommends that the Court of Appeals amend its Rule 17 to conform more closely to Federal Rule of Appellate Practice Rule 17 on handling the administrative record in agency review cases. The modern federal appellate rule is flexible, providing a series of options including filing only one copy of the administrative record with the appellate court. Adopting the modern practice will save time, space and money by dispensing with the cumbersome current system in our Court of Appeals, which requires that "four legible certified copies of the records and papers" be filed in every administrative agency review case.

Our recommendation is timely because an internal Court of Appeals Task Force is now studying, generally, how to improve the handling of the record on appeal from civil and criminal cases in Superior Court. We checked with the Court Task Force and the Corporation Counsel's Office, both of which indicated that they would respond favorably if the Section were to make the recommendation that the Section is proposing to make about Court of Appeals Rule 17.

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May 21, 1996

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The Honorable Garland Pinkston, Jr.
Clerk of the District of Columbia
Court of Appeals
H. Carl Moultrie I Courthouse
500 Indiana Avenue, N.W., Sixth Floor
Washington, D.C. 20001-2131

Re: Court of Appeals Rule 17

Carol Ann Cunningham
Sections Manager

Dear Mr. Pinkston:

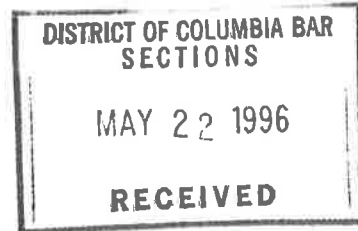
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This is a suggestion from the District of Columbia Bar's Section on Administrative Law for amending Court of Appeals Rule 17 to save time, space and money by conforming it more closely to Federal Rule of Appellate Procedure Rule 17 on handling the administrative record in agency review cases.¹

At present, Court of Appeals Rule 17(a) provides that the agency shall file with the clerk "four legible certified copies of the records and papers" in administrative agency review cases. Typically, one copy of the record is kept by the Clerk's office, while the other three copies are sent to the chambers of the Judges on the panel deciding the case.

To save time, space and money, we suggest that Rule 17(a) be amended to model itself more closely after F.R.App.P. Rule 17(b). The Federal Appellate Rule establishes a flexible system with a series of options: One copy of the administrative record may be filed with the Court of Appeals or only parts of the record designated by the parties need be filed or a certified list of documents in the administrative record may be filed or "[t]he parties may stipulate that neither the record nor a certified list be filed with the court." If less than the complete administrative record is filed, the agency retains the record not filed with the court. "Upon request of the court or the request of a party, the record or any part thereof thus retained shall be transmitted to the court notwithstanding any prior stipulation. All parts of the record retained by the agency shall be a part of the record on review for all purposes."

¹ The views expressed herein represent only those of the Administrative Law Section of the District of Columbia Bar and not those of the D.C. Bar or of its Board of Governors.



There are several advantages to modernizing Rule 17 in this fashion, along the lines of Federal Appellate Rule 17. (1) Time savings: speedier case disposition. There have been chronic delays in getting the administrative record to the Court. These delays reflect the staff shortages in many District agencies and the burdensome, time-consuming nature of assembling the administrative record in many cases. Eliminating the requirement for filing multiple copies of the administrative record would streamline the process. It also might speed up the disposition of administrative law cases before the Court. (2) Space savings. Were Rule 17 changed to require filing of (at most) only one copy of the administrative record, it would save a significant amount of space within the Court and the Clerk's Office. (3) Cost savings. In these times of financial strain, it is needlessly expensive for D.C. agencies to produce multiple copies of the administrative record. We are advised that in cases with large administrative records, the extra cost of reproducing four copies of the record, rather than one copy, is often \$10,000.00 or more.

We urge the Court of Appeals to modernize its Rule 17 by following the model of Federal Appellate Rule 17.

Thank you for considering our views.

Sincerely yours,

Sheryl L. Walter, Co-Chair
 Martin Wald, Co-Chair
 Whitney Adams
 Ellen Berick
 Pat Carome
 Elaine English
 Ed Huddleson *
 Lucinda Sikes

* Principal author

cc: The Honorable John A. Terry
 District of Columbia Court of Appeals

The Honorable John W. Kern, III
 District of Columbia Court of Appeals

Charles Reischel, Esquire
 Corporation Counsel's Office