



Comment to proposed rule changes and implementation of Differentiated Case Management

1 message

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Good Afternoon –

I would like to comment on the following proposed change to M.R. Civ. P. 80B(e):

(e) Record.

(1) *Preparation and Filing Responsibility.* Except where otherwise provided by statute or this **Rule rule**, ~~(i) it~~

(A) ~~It~~ shall be the ~~plaintiff's~~ **governmental agency's** responsibility to ensure the preparation and filing with the Superior Court of the record of the proceedings of the governmental agency being reviewed, and ~~(ii) the~~

(B) ~~The~~ record for review shall be filed at the same time as or ~~prior to~~ **before** the plaintiff's brief. Where a motion is made for a trial of the facts pursuant to subdivision (d) of this **Rule rule**, the moving party shall be responsible to ensure the preparation and filing of the record and such record shall be filed with the motion.

I understand that the intent behind this proposed revision is to decrease the delay that sometimes occurs in the Superior Court's receipt of the complete record in an 80B appeal. Based upon my experience working with Rule 80B appeals and smaller rural municipalities, I do not believe that shifting the burden of production to the municipality will speed up the time frame for filing the record and may instead have quite the opposite effect. Many of the small towns I work with have very limited staff, limited office hours, and little involvement by the Town Clerk or Administrator with the Planning Board or Board of Appeals processes. In an 80B appeal, it is generally the applicant/landowner and the applicant's neighbors who play the primary roles in the appeal procedure. They will usually have retained counsel in order to file and/or defend an appeal and the attorneys should have a good grasp on the appropriate documents, recordings, and plans that make up the administrative record in any given case. Most town clerks and officials are completely unfamiliar with Rule 80B and will not understand the scope or the content required for filing a proper and complete record with the court. In addition, if the record is voluminous, as it can be in some land use cases, the cost of reproduction would normally be borne by the Plaintiff/Appellant. This proposed revision to the rule does not provide an opportunity for a municipality to recoup any of its costs incurred in the preparation and filing of the record.

Respectfully submitted,

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