

### Proposed Amendments to Rule 73.3

Rule 73.3 is amended as follows:

**Rule 73.3.** Documents in All Other Actions Based ~~Upon~~ **On** the Agency Record

(a) Documents Furnished in All Other Actions Based Upon **On** the Agency Record. Unless the alternative procedure prescribed by subdivision (b) of this rule is followed, in all actions in which judicial review is ~~upon~~ **on** the basis of the record made before an agency, other than those actions described in Rules 73.1 and 73.2, within 40 days after the service of the summons and complaint ~~upon~~ **on** the agency, the agency ~~shall~~ **must** file with the clerk of the court the items specified in paragraphs (1), (2) and (3) of this subdivision (a), if they exist, and the certified list specified in paragraph (4) of this subdivision (a), as part of the official record of the civil action.

(1) A copy of the contested determination and the findings or report ~~upon~~ **on** which such determination was based.

(2) A copy of any reported hearings or conferences conducted by the agency.

(3) Any documents, comments, or other papers filed by the public, interested parties, or governments with respect to the agency's action. The agency ~~shall~~ **must** identify and file under seal any document, comment, or other information obtained on a confidential basis, including a non-confidential description of the nature of such confidential document, comment or information.

(4) A certified list of all items specified in paragraphs (1), (2) and (3) of this subdivision (a).

(b) Stipulations. The parties may stipulate that fewer documents, comments, or

other information than those specified in subdivision (a) of this rule ~~shall~~**will** be filed with the clerk of the court. The agency ~~shall~~**must** retain the remainder of the record. All parts of the record ~~shall~~**will** be part of the record on review for all purposes. ~~Upon~~**On** request to the agency by a party, or by the court, at any time, any part of the record retained by the agency ~~shall~~**must** be filed by the agency with the clerk of the court ~~forthwith~~ **promptly**, notwithstanding any prior stipulation or designation under this subdivision.

(c) Documents Filed-Copies. Certified copies of the original papers in the agency proceeding may be filed.

**~~PRACTICE COMMENT:~~** Pursuant to the renumbering of the Rules, the former Rule 72 now will be identified as Rule 73.3. New Rule 72 is “Reserved.”

(Added Sept. 30, 2003, eff. Jan. 1, 2004; and amended May 25, 2004, eff. Sept. 1, 2004.); ~~\_\_\_\_\_~~, **2009, eff. \_\_\_\_\_, 2010.**)

#### **Advisory Committee Note**

The language of Rule 73.3 has been amended as part of the general restyling of these rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

The Practice Comment that was added in 2004, which noted changes to the rule numbers in this title, has been deleted because these changes have been in place for a number of years.