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An Unnecessary Statutory Duel



Navigating the hazardous shoals of writ practice, attorneys often face the question whether a request for preparation of the record extends the very short, 90-day period to file a petition for writ of mandate. Both the Administrative Procedure Act and Code of Civil Procedure § 1094.6 state that a request for the record extends the time for filing the petition until after the record is received. The tricky part is verifying that the action is, in fact, subject to either of those statutes. *Okasaki v. City of Elk Grove* involved dueling statutes of limitations. Both set a 90-day deadline, but only one -- § 1094.6 -- extends the statute based on a request for the record. The petitioner brought the case to challenge city council approval of a variance allowing a neighbor to build a swimming pool. The petition was filed more than 90 days after the council's decision but it alleged that the 90-day limitations period in Government Code § 65009 was extended under § 1094.6 because a timely request for the administrative record had been made and the city had not yet provided the record. To decide if the case had been filed on time, the court examined both statutes to determine which prevailed. The court held that § 65009 "applied more specifically" to the challenge to the variance than § 1094.6. It found that nothing in § 65009 allowed for an extension of the deadline based on a request for the administrative record, and § 1094.6 did not operate to extend the limitations period under these particular facts. The court was unpersuaded by plaintiffs' argument that its holding would encourage local agencies to delay or withhold administrative records and transcripts, observing that other remedies were available to address such concerns.

What is odd about the decision, and illustrates the treacherous nature of these waters, is that there was no need for the court to determine which statute applied more specifically because § 1094.6 did not apply at all. That statute applies only to actions challenging *denial or revocation* of permit or license. § 1094.6(f). Yet the petitioner had challenged the *grant* of a zoning entitlement. Apparently neither counsel nor the court caught that.