

AMENDMENTS TO THE CALIFORNIA RULES OF COURT

Adopted by the Judicial Council on June 24, 2016,
effective on July 1, 2016

1 **Rule 10.855. Superior court records sampling program**

2
3 (a)–(b) * * *

4
5 (c) **Comprehensive and significant records**

6
7 Each superior court must preserve forever comprehensive and significant court
8 records as follows:

- 9
10 (1) All records filed before 1911;
- 11
12 (2) If practicable, all records filed after 1910 and before 1950;
- 13
14 (3) All case indexes; and
- 15
16 ~~(4) All judgment books if the court maintains judgment records separate from the~~
17 ~~case files;~~
- 18
19 ~~(5) All minute books if the court maintains minutes separate from the case files;~~
20 ~~and~~
- 21
22 ~~(6) All registers of action if the court maintains them.~~
- 23
24 (4) All noncapital cases in which the California Supreme Court has issued a
25 written opinion.

26
27 *(Subd (c) amended effective July 1, 2016; adopted as subd (b); previously amended and*
28 *relettered effective January 1, 2001; previously amended effective January 1, 2007.)*

29
30 (d) **Sample records**

31
32 If a superior court destroys court records without preserving them in a medium
33 described in ~~(h)~~ (g), the court must preserve forever a sample of ~~each year's~~ court
34 records as provided by this rule of all cases, including sealed, expunged, and other
35 confidential records to the extent permitted by law.

36
37 *(Subd (d) amended effective July 1, 2016; adopted as subd (c); relettered effective January*
38 *1, 2001; previously amended effective January 1, 2007.)*

39
40 (e) **Court record defined**

1 The “court record” under this rule consists of the following:
2

3 (1) * * *

4
5 (2) The case folder, unless all information on the case folder is in papers and
6 documents preserved in a medium described in ~~(h)~~ (g); and

7
8 (3) If available, corresponding depositions, ~~paper exhibits~~, daily transcripts, and
9 tapes of electronically recorded proceedings.

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11 *(Subd (e) amended effective July 1, 2016; adopted as subd (d); previously amended and*
12 *relettered effective January 1, 2001; previously amended effective January 1, 2007.)*

13
14 **(f) Sampling technique**

15
16 Three courts assigned in rotation by the Judicial Council must preserve ~~100 percent~~
17 ~~of their court records for a calendar year (“longitudinal sample”)~~. the following:

18
19 (1) A random sample of 25 percent of their court records for a calendar year,
20 with the exception of the Superior Court of Los Angeles County, which must
21 preserve a random sample of 10 percent of its court records for a calendar
22 year.

23
24 (2) All judgment books, minute books, and registers of action if maintained
25 separately from the case files, for the calendar year. All other courts must
26 preserve a systematic sample of 10 percent or more of each year’s court
27 records and a 2 percent subjective sample of the court records scheduled to be
28 destroyed, as follows:

29
30 (1) ~~The “systematic sample” must be selected as follows after grouping all cases~~
31 ~~scheduled to be destroyed by filing year:~~

32
33 (A) ~~If the cases scheduled to be destroyed for a filing year number more~~
34 ~~than 1,000 cases, the sample must consist of all cases in which the last~~
35 ~~digit of the case number (0–9) coincides with the last digit of the year~~
36 ~~in which the case was filed.~~

37
38 (B) ~~If the cases scheduled to be destroyed for a filing year number from~~
39 ~~100 to 1,000, the sample must consist of cases selected by (1) dividing~~
40 ~~the number of cases filed by 100, rounding fractions down to the next~~
41 ~~lower number, and (2) counting the cases and preserving each case with~~
42 ~~a position number in the files or other record that corresponds with the~~

1 number computed (for example, 670 cases \div 100 = 6.7; select every
2 sixth case).

3
4 (C) If fewer than 100 cases of a filing year are scheduled to be destroyed,
5 all of the cases must be preserved.

6
7 (D) If the records to be destroyed are old, unnumbered cases, the sample
8 must consist of cases identified by counting the cases (0–9) and
9 preserving each case with a position number in the file or other record
10 that corresponds with the number determined under (A) or (B), unless
11 fewer than 100 cases are to be destroyed.

12
13 (2) The “subjective sample” must consist of at least 2 percent of all cases
14 scheduled to be destroyed, but not fewer than the court records of 20 cases,
15 and must include (1) all cases accepted for review by the California Supreme
16 Court, (2) “fat files” or the thickest perceived case files, and (3) cases deemed
17 by the court to be of local, national, or international significance. These cases
18 must be identified by stamp or mark to distinguish them from the systematic
19 sample. The Judicial Council will provide each court with a list of cases
20 accepted for review by the California Supreme Court each year.

21
22 *(Subd (f) amended effective July 1, 2016; adopted as subd (e); repealed, amended, and*
23 *relettered effective January 1, 2001; previously amended effective January 1, 2007.)*
24

25 **(g) Augmented sample; designated advisory consultant**

26
27 (1) The Judicial Council may designate a consultant to review, under the
28 guidance of a qualified historian or archivist, court records scheduled for
29 destruction and determine if the court’s systematic sample should be
30 augmented to improve representation of the variety of cases filed.

31
32 (2) The court should give the designated consultant 60 days’ notice of intent to
33 destroy any court records that it does not plan to retain for the sample.

34
35 (3) The designated consultant’s role is advisory to the court. If the consultant
36 determines that the systematic sample does not represent the variety of cases
37 filed in a sample year, the court should select a random sample of cases to
38 augment the systematic sample.

39
40 (4) Final selection of the court records to augment the sample is to be made by
41 the clerk of the superior court.
42

1 **(h)(g) Preservation medium**

- 2
- 3 (1) Comprehensive and significant court records under (c) filed before 1911 must
- 4 be preserved in their original paper form unless the paper is not available.
- 5
- 6 (2) Comprehensive and significant court records under (c) ~~that are part of the~~
- 7 ~~comprehensive sample~~ filed after 1910 and sample records under (d), ~~the~~
- 8 ~~systematic sample, and the subjective~~ must be retained permanently in accord
- 9 with the requirements of the *Trial Court Records Manual*.

10

11 *(Subd (g) amended and relettered effective July 1, 2016; adopted as subd (h); previously*

12 *amended effective January 1, 2001, January 1, 2007, and January 1, 2011.)*

13

14 **(i) Storage**

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16 ~~Until statewide or regional archival facilities are established, each court is~~

17 ~~responsible for maintaining its comprehensive and sample court records in a secure~~

18 ~~and safe environment consistent with the archival significance of the records. The~~

19 ~~court may deposit the court records in a suitable California archival facility such as~~

20 ~~a university, college, library, historical society, museum, archive, or research~~

21 ~~institution whether publicly supported or privately endowed. The court must ensure~~

22 ~~that the records are kept and preserved according to commonly recognized archival~~

23 ~~principles and practices of preservation.~~

24

25 **(j)(h) Access**

26

27 The court must ensure the following:

- 28
- 29 (1) The comprehensive, significant, and sample court records are made
- 30 reasonably available to all members of the public.
- 31
- 32 (2)–(4) * * *

33

34 *(Subd (h) amended and relettered effective July 1, 2016; adopted as subd (j); previously*

35 *amended effective January 1, 2007.)*

36

37 **(k)(i) Choosing an archival facility Storage**

- 38
- 39 (1) Until statewide or regional archival facilities are established, each court is
- 40 responsible for maintaining its comprehensive, significant, and sample court
- 41 records in a secure and safe environment consistent with the archival
- 42 significance of the records. The court may deposit the court records in a
- 43 suitable California archival facility such as a university, college, library,

1 historical society, museum, archive, or research institution whether publicly
2 supported or privately endowed. The court must ensure that the records are
3 kept and preserved according to commonly recognized archival principles
4 and practices of preservation.
5

6 (2) If a local archival facility is maintaining the court records, the court may
7 continue to use that facility's services if it meets the storage and access
8 requirements under (h) and ~~(j)~~(i)(1). If the court solicits archival facilities
9 interested in maintaining the comprehensive, significant, and sample court
10 records, the court must follow the procedures specified under rule 10.856,
11 except that the comprehensive, significant, and sample court records must not
12 be destroyed. Courts may enter into agreements for long-term deposit of
13 records subject to the storage and access provisions of this rule.
14

15 *(Subd (i) amended and relettered effective July 1, 2016; adopted as subd (k); previously*
16 *amended effective January 1, 1994, January 1, 2001, and January 1, 2007.)*
17

18 ~~(A)~~(j) **Reporting requirement**
19

20 Each superior court must submit semiannually to the Judicial Council a *Report to*
21 *the Judicial Council: Superior Court Records Destroyed, Preserved, and*
22 *Transferred* (form REC-003), including the following information:
23

- 24 (1) A list by year of filing of the court records destroyed;
25
26 (2) A list by year of filing and location of the court records of the comprehensive
27 and sample court records preserved; and
28
29 (3) A list by year of filing and location of the court records transferred to entities
30 under rule 10.856.
31

32 *(Subd (j) amended and relettered effective July 1, 2016; adopted as subd (1); previously*
33 *amended effective January 1, 1994, January 1, 1995, January 1, 2001; January 1, 2007,*
34 *and July 1, 2013.)*
35

36 **(k) Application**
37

38 The sampling program provided in this rule, as amended effective July 1, 2016,
39 applies retroactively to all superior courts.
40

41 *(Subd (k) adopted effective July 1, 2016.)*
42

1 *Rule 10.855 amended effective July 1, 2016; adopted as rule 243.5 effective July 1, 1992;*
2 *previously amended and renumbered as rule 6.755 effective January 1, 2001, and as rule 10.855*
3 *January 1, 2007; previously amended effective January 1, 1994, January 1, 1995, January 1,*
4 *2011, and July 1, 2013.*

5
6 **Advisory Committee Comment**

7
8 **Subdivision (c)(4).** Capital cases are excluded under subdivision (c)(4) because these cases have
9 an automatic right of appeal to the California Supreme Court, and trial court records are retained
10 permanently under Government Code section 68152(c)(1) if the defendant is sentenced to death.
11 Each year, the Judicial Council will make available to the superior courts a list of all noncapital
12 cases in which the California Supreme Court has issued a written opinion.

13
14 **Subdivision (k).** Because the destruction of court records is discretionary, all courts may elect to
15 apply the rule retroactively and destroy court records that are not required to be preserved under
16 subdivisions (c), (d), and (f), but they are not required to do so.

17
18 Superior courts that destroyed court records under the prior sampling rule may have preserved
19 only 10 percent of their records (formerly known as the “systematic sample”) for the year that
20 they are now assigned to preserve the sample defined in subdivision (f). Except for the Superior
21 Court of Los Angeles County, these courts would not be able to meet the requirement in
22 subdivision (f)(1). So long as these courts continue preserving the 10-percent sample for their
23 assigned year, they will be deemed to have satisfied subdivision (f)(1).