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MS. JODY PATEL
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August 5, 2014

To: Members of the CEAC Working Group on Records Management

Re: August 18th Conference Call

Thank you for your continued commitment to the important work performed by our working group on behalf of the Branch. In preparation for our conference call, I wanted to identify some items to think about and be ready to discuss on the 18th.

I have attached a list of potential TCRM Manual issues and subjects received from court staff that could be addressed in the next round of manual revisions. With everyone's time and resources being so scarce these days, I'd like to suggest we limit our efforts to those with the most benefit to the Branch. My prior conversations with some members of the working group suggest that the most beneficial efforts would be those related to:

1. E-signatures
2. Best practices and guidelines related to capitol case exhibits
3. Case sampling requirements under the California Rules of Court.

During the conference call, we should decide if these or other items should be our priorities.

If we adopt these three priorities, I would also like to suggest the following:

1. We establish a small subcommittee to work on each.
2. Jake and/or Robert provide us with their thoughts during the call as to how our efforts regarding E-signatures should be coordinating with that performed by the committees established by the JCTC to establish a more structured approach to technology within the Branch.

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3. We nominate a group of hands-on operational experts from our courts to develop the manual section on best practices and guidelines for death penalty exhibits. Perhaps Orange's policies submitted by Alan can act as a basis with which to start. This group may also want to seek some input from John Judnick's audit staff since they are including exhibit maintenance in their audit findings.
4. Based on the our survey findings regarding the case file sampling program, we need to first determine if it should be abolished in total or part or just updated and clarified.

Those are some initial thoughts to get us going. I'm looking forward to discuss these and other matters further on the 18th.

Sincerely,

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CEAC Working Group on Records Management

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Trial Court Records Manual

EFFECTIVE JANUARY 1, 2011

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JUDICIAL COUNCIL
OF CALIFORNIA

ADMINISTRATIVE OFFICE
OF THE COURTS

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2013 California Rules of Court

Rule 10.855. Superior court records sampling program

(a) Purpose

This rule establishes a program to preserve in perpetuity for study by historians and other researchers all superior court records filed before 1911 and a sample of superior court records filed after December 31, 1910, to document the progress and development of the judicial system, and to preserve evidence of significant events and social trends. This rule is not intended to restrict a court from preserving more records than the minimum required.

(Subd (a) amended effective January 1, 2007.)

(b) Scope

"Records" of the superior court, as used in this rule, does not include records of limited civil, small claims, misdemeanor, or infraction cases.

(Subd (b) adopted effective January 1, 2001.)

(c) Comprehensive records

Each superior court must preserve forever comprehensive court records as follows:

- (1) All records filed before 1911;
- (2) If practicable, all records filed after 1910 and before 1950;
- (3) All case indexes;
- (4) All judgment books if the court maintains judgment records separate from the case files;
- (5) All minute books if the court maintains minutes separate from the case files; and
- (6) All registers of action if the court maintains them.

(Subd (c) amended effective January 1, 2007; adopted as subd (b); previously amended and relettered effective January 1, 2001.)

(d) Sample records

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

(Subd (d) amended effective January 1, 2007; adopted as subd (c); relettered effective January 1, 2001.)

(e) Court record defined

The "court record" under this rule consists of the following:

- (1) All papers and documents in the case folder; but if no case folder is created by the court, all papers and documents that would have been in the case folder if one had been created; and
- (2) The case folder, unless all information on the case folder is in papers and documents preserved in a medium described in (h); and
- (3) If available, corresponding depositions, paper exhibits, daily transcripts, and tapes of electronically recorded proceedings.

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

(f) Sampling technique

Three courts assigned in rotation by the Judicial Council must preserve 100 percent of their court records for a calendar year ("longitudinal sample"). All other courts must preserve a systematic sample of 10 percent or more of each year's court records and a 2 percent subjective sample of the court records scheduled to be destroyed, as follows:

- (1) The "systematic sample" must be selected as follows after grouping all cases scheduled to be destroyed by filing year:
 - (A) If the cases scheduled to be destroyed for a filing year number more than 1,000 cases, the sample must consist of all cases in which the last digit of the case number (0-9) coincides with the last digit of the year in which the case was filed.
 - (B) If the cases scheduled to be destroyed for a filing year number from 100 to 1,000, the sample must consist of cases selected by (1) dividing the number of cases filed by 100, rounding fractions down to the next lower number, and (2) counting the cases and preserving each case with a position number in the files or other record that corresponds with the number computed (for example, 670 cases ($100 = 6.7$; select every sixth case).
 - (C) If fewer than 100 cases of a filing year are scheduled to be destroyed, all of the cases must be preserved.
 - (D) If the records to be destroyed are old, unnumbered cases, the sample must consist of cases identified by counting the cases (0-9) and preserving each case with a position number in the file or other record that corresponds with the number determined under (A) or (B), unless fewer than 100 cases are to be destroyed.
- (2) The "subjective sample" must consist of at least 2 percent of all cases scheduled to be destroyed, but not fewer than the court records of 20 cases, and must include (1) all cases accepted for review by the California Supreme Court, (2) "fat files" or the thickest perceived case files, and (3) cases deemed by the court to be of local, national, or international significance. These cases must be identified by stamp or mark to distinguish them from the systematic sample. The Judicial Council will provide each court with a list of cases accepted for review by the California Supreme Court each year.

(Subd (f) amended effective January 1, 2007; adopted as subd (e); repealed, amended, and relettered effective January 1, 2001.)

(g) Augmented sample; designated advisory consultant

- (1) The Judicial Council may designate a consultant to review, under the guidance of a qualified historian or archivist, court records scheduled for destruction and determine if the court's systematic sample should be augmented to improve representation of the variety of cases filed.
- (2) The court should give the designated consultant 60 days' notice of intent to destroy any court records that it does not plan to retain for the sample.
- (3) The designated consultant's role is advisory to the court. If the consultant determines that the systematic sample does not represent the variety of cases filed in a sample year, the court should select a random sample of cases to augment the systematic sample.
- (4) Final selection of the court records to augment the sample is to be made by the clerk of the superior court.

(Subd (g) amended effective January 1, 2007.)

(h) Preservation medium

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

(Subd (h) amended effective January 1, 2011; previously amended effective January 1, 2001, and January 1, 2007.)

(i) Storage

Until statewide or regional archival facilities are established, each court is responsible for maintaining its comprehensive and sample court records in a secure and safe environment consistent with the archival significance of the records. The court may deposit the court records in a suitable California archival facility such as a university, college, library, historical society, museum, archive, or research institution whether publicly supported or privately endowed. The court must ensure that the records are kept and preserved according to commonly recognized archival principles and practices of preservation.

(Subd (i) amended effective January 1, 2007.)

(j) Access

The court must ensure the following:

- (1) The comprehensive and sample court records are made reasonably available to all members of the public.
- (2) Sealed and confidential records are made available to the public only as provided by law.
- (3) If the records are preserved in a medium other than paper, equipment is provided to permit public viewing of the records.
- (4) Reasonable provision is made for duplicating the records at cost.

(Subd (j) amended effective January 1, 2007.)

(k) Choosing an archival facility

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

(Subd (k) amended effective January 1, 2007; previously amended effective January 1, 1994, and January 1, 2001.)

(l) Reporting requirement

Each superior court must submit semiannually to the Judicial Council a *Report to the Judicial Council: Superior Court Records Destroyed, Preserved, and Transferred* (form 982.8A), including the following information:

- (1) A list by year of filing of the court records destroyed;
- (2) A list by year of filing and location of the court records of the comprehensive and sample court records preserved; and
- (3) A list by year of filing and location of the court records transferred to entities under rule 10.856.

(Subd (l) amended effective January 1, 2007; previously amended effective January 1, 1994, January 1, 1995, and January 1, 2001.)

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

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Judicial Branch Case File Sampling Program
Survey Responses

Question 1: Have members of the public, other agencies or organizations accessed cases that are retained under the sampling program? If so, who has accessed them, how often, and why?	
Court	Responses
Alameda	We have had extremely infrequent requests over the last 5 years.
El Dorado	El Dorado Court has not begun our records management program and currently retain all Superior Court case files. We receive requests daily to view files that are likely subject to the sampling program. The reasons for these requests vary.
Los Angeles	LASC has either electronically preserved or maintained hard copy files for all general jurisdiction cases, thus we cannot determine if cases under the sampling program has been accessed.
Monterey	No, we have not received a request to access cases retained under the sampling program.
Orange	Since 2012 there have been two requests. One request was made by a production company looking for case information on a specific defendant in the early 1900s. The second request was made by media for a case filed in the late 1890s. Both of these cases fall under the comprehensive sampling due to their age. For more recent sampling records, no requests have been made.
Placer	There is no record of anyone ever asking for the files retained as part of sampling program.
Riverside	No, I am not aware of any such requests. However it should be noted that we currently still have most all of our Unlimited case types and have not regularly pursued destruction of Unlimited cases which would require sampling. For destruction, our focus has mainly been on the Misdemeanors, infractions, Small Claims and Limited Civil, which do not require sampling.
Santa Cruz	No one has accessed them.
Solano	On rare occasion, the public would search all cases for a name, find the case number, and then want to view all cases found on a particular person.
Sutter	Sutter has received approximately 3 requests per year. The requests have been for copies from parties to the case only.
Tehama	No.
Tulare	Tulare County receives daily requests from the public and other agencies to view files that are subject to the sampling program. The reasons for these requests vary.
Ventura	To my knowledge our court has never received a request to review cases retained under the sampling program.

Question 2: What are your court's criteria to identify cases that fall under the <u>subjective</u> sampling program, i.e., fat files or cases with local, statewide, and national significance?	
Court	Responses
Alameda	We have not established such criteria.
El Dorado	El Dorado Court is not currently destroying Superior Court Records. As a result we do not have a criteria to identify the subjective sampling. We have considered case files that are 3 or more volumes in size (fat files) and identifying cases with significance going forward as they occur.
Los Angeles	We do not currently have a method in place to identify cases of local, statewide or national significance.
Monterey	Currently, we would specify multi-volume cases and/or cases that were considered "high-profile" due to subject matter and easily identified. Superior Court records have historically been microfilmed and currently scanned for retention periods. No destruction of these files has occurred.
Orange	Other than determining which cases have been accepted for review by the California Supreme Court, at this time, Orange County does not have criteria to identify fat files or cases with local, statewide, or national significance. We have considered tracking cases which have substantial media interest to discuss with the respective judicial officer to deem them of significance for sampling purposes; however, we have not finalized this practice. In practice this should be done when the case is still active, or recently resolved, instead of waiting for the retention period and then trying to remember that the case was of interest. In regards to fat files, we generally utilize a three-volume rule of thumb to establish a case as a fat file; however, this differs among case types as well as past practices.
Placer	The court does not currently destroy any files that would be subject to the sampling program. Therefore, at this time, no criteria exists and all files are retained.

Judicial Branch Case File Sampling Program

Survey Responses

Riverside	<p>With regards to the Subjective Sample:</p> <ul style="list-style-type: none"> • Accepted for review by California Supreme Court – This list is found on the Serranus website. The last year posted is 2010 – 2011. By reviewing this list I would be able to determine the Riverside cases identified. • Fat Files – The only criteria given to make this determination is “the thickest perceived case files”, so this would be the criteria we would use to make this determination for the required 2%. • Deemed by the Court to be of local, national or international significance – To determine these cases, based on the criteria given it is my understanding that this would need to be determined by a Court Executive Committee in which the Courts Executive Team and possibly Judges and knowledge experts familiar with the annual cases filed, would review annually to determine any cases that may be categorized as meeting this criteria so these cases could be identified, stamped and set aside (2% per year being destroyed). This item is not clearly defined in the California Rule Of Court as to how these cases are to be identified or determined.
Santa Cruz	We currently do not have anything officially in writing. We have not done a sampling of files since I have been with the court, but we would keep cases that are significant to our area or statewide or national like murder cases.
Solano	Fat files are indentified by viewing the entire year for destruction. Then removing the largest (multi-volume) cases from the year until the percentage of subjective sampling for the year is obtained.
Sutter	A case file of more than 3 volumes was retained as historical or high profile.
Tehama	Cases with significance and/or high profile.
Tulare	Tulare County is not currently destroying Superior Court Records. As a result we do not have a criteria to identify the 2% subject to the sampling program.
Ventura	We have not established any clear criteria to identify cases that fall under the subjective sampling program. We are so short staffed that destruction of cases has not been a priority.

Question 3a: Regarding fat files in particular: If your files are digitized, do you have a criterion for the number of scanned pages necessary to qualify a case file as “fat”?	
Court	Responses
Alameda	Our court files are digitized; we do not have a criterion to qualify case as “fat”.
El Dorado	Not applicable.
Los Angeles	No.
Monterey	Currently, Monterey does not have criterion identified.
Orange	The question has been raised in Orange County as the record in almost all case types are now file-less; however, we have yet to come up with guidelines to establish fat file qualifications.
Placer	Not applicable.
Riverside	No specific number, but again based on the only criteria given, the cases with the most amount of pages would have to be kept (2% per year being destroyed). If digitized and if page counts are available digitally, then you would have a more reliable source to determine the largest file and would not be subject to only what may be “perceived” as you would be when only visually looking at multi volume large paper files to determine the thickest perceived.
Santa Cruz	Our files are not digitized.
Solano	Not applicable.
Sutter	The subjective samplings Sutter retained were prior to microfilming. After scanning and microfilming procedures were implemented, we stopped identifying the “fat” file cases as every case was scanned and filmed, and became available for the staff or public. Confidential files were scanned and microfilmed; however, the same rules concerning accessibility apply to the scanned images as did to the physical files.
Tehama	We do not.
Tulare	Not applicable.
Ventura	Our files are not digitized.

Judicial Branch Case File Sampling Program

Survey Responses

Question 3b: <i>Regarding fat files in particular: Do you believe that the size of a file alone is a valid reason to retain it under the sampling program? Please provide your rationale for your answer.</i>	
Court	Responses
Alameda	No, we should not retain files based on size alone. We have complex and Asbestos cases which are usually very large and are costly to house off-site and take up a great deal of space on-site.
El Dorado	No. Our response is the same as Orange Court.
Los Angeles	No, the number of documents filed in a case is not in any way related to the significance of a case.
Monterey	Size along with local, statewide or national and or historic value should be considered. There are times when voluminous files do not have geographic or historic significance.
Orange	No, we do not believe that file size alone should necessitate permanent retention under the sampling program. The thickness of the file or the voluminous filing of documents in one case should not automatically deem a file noteworthy enough to retain for historical purposes. For example, a family law child custody case could have started when the minor was months old, which potentially leads to 17 years' or more worth of court filings in one case and results in a multi-volume record. Moreover, a fat file could reflect the litigiousness and contentiousness of the parties or attorneys in a case which is otherwise not noteworthy. To this extent, the sampling of fat files would not only not be exemplary of historical significance, but might skew the sample in unintended ways. Thickness, by itself, does not infer that the case is so significant it should be considered a sampling record. A more typical, relatively thin, case file could have more impact or interest historically than a multi-volume one.
Placer	No. Large files may contain very little public interest but instead be the result of a case in which the parties were particularly litigious.
Riverside	With regards specifically to the "Fat File", it appears yes this would be a valid reason. Rationale, this is the only criteria that was given to identify what qualifies as a Fat File based on the California Rule.
Santa Cruz	No. Some cases can just have a lot of motions, etc. and not be something noteworthy.
Solano	No, I feel cases are adequately retained under retention rules by case type already.
Sutter	Not necessarily. We have some "fat" files that would not be considered historical or worth preserving.
Tehama	No. There are high profile cases and cases with significance that are not necessarily larger in size.
Tulare	No. Files can contain voluminous Motions and/or court reporter transcripts which can increase the size of a file, but have little impact on the significance of the case.
Ventura	We do not believe that size alone is a valid reason to retain a case file. We feel that the retention periods authorized by Government Code sections 68152 and 68153 are sufficient, regardless of the size of the file.

Question 4: <i>Do you have any suggestions as to how fat files or cases with local, statewide, and national significance can be better defined?</i>	
Court	Responses
Alameda	Establishment of a page-limit criterion (fat) and judicial identification (significance).
El Dorado	We believe the sampling of "fat" files should be removed. We have discussed identifying the cases with local, statewide, and national significance as they occur. For example the Garrido case would be considered a case of national significance and a recent criminal case against an El Dorado County Board of Supervisor would be considered local significance. For past cases of significance, we will need to rely on our judicial officers and perhaps local media to identify these. We did not come up with a better definition for identifying cases with significance.
Los Angeles	No, this requirement places an undue hardship on the Courts; the burden should be shifted to researchers and historians required to receive notice of intent to destroy pursuant to CRC 10.856.
Monterey	Each court should be able to identify based upon their own criteria. Identifying cases when active or at disposition would assist future records' management teams in including them in yearly samplings.

Judicial Branch Case File Sampling Program

Survey Responses

Orange	We would like to see the fat file requirement be removed from the sampling program altogether. As the response to question 3b suggests, if the file size is the sole reason for retaining it as part of the sampling, then we believe the definition of a fat file should be significantly large enough to suggest it be deemed of historical significance. As an example, for truly “fat” files, a good definition could perhaps be a set number of volumes, such as 10 or more and presuming about 300 pages fit in one volume. For digital records, that would equate to 3,000 or more pages.
Placer	Rather than the broad description, having specific case types that are of specific interest might be helpful (for example eminent domain). Alternatively, going forward, cases could be identified during the life of the case if there are more than a predefined number of media requests submitted on the case.
Riverside	Based on my understanding, of what was being targeted for “Fat File Samples”, the sample was to be the largest cases for the year being destroyed up to 2%. So I am comfortable with the verbiage noted in the CR, “thickest perceived” to be used as the determining factor. Unless there is a different intended file type they are looking to target. Cases with local, Statewide and national significance – Yes, my suggestion would be an annual review of cases for an Executive Committee to determine which cases are significant for their particular Court. This may require involvement from Judges or Managers/knowledge experts by area of law that may have insight into how to determine these cases for each year.
Santa Cruz	We might say retain the file if it goes to the CA Supreme Court or historical significance as a crime (multiple murders).
Solano	Cases deemed to be of local, statewide, and national significance by “order” of the court.
Sutter	Prior to scanning and micro-filming all cases, we stamped the outside of any file that was high profile or of local, statewide or national significance. Newer cases that are in the case management system could be identified by entering an event that could later be used to produce reports by year or case type.
Tehama	Fat files should not be in the same category as local, statewide and/or national significance. Maybe some identifier similar to how class action cases are identified.
Tulare	A trigger or an identifier coded into the case management system may help identify these types of cases.
Ventura	We feel that these requirements should be eliminated.

Question 5: Do you foresee any issues if the sampling program was eliminated in whole or part? If in part, which requirements should be retained and why?	
Court	Responses
Alameda	Retain all cases pre-1911, all registers of actions, judgment books, cases that have significant local, statewide, or national notoriety, and cases that have been considered by the Supreme Court.
El Dorado	Not at this time. Elimination of the sampling program in part by reducing the sampling requirements to a lower percentage or expanding the number of years between the sampling would likely provide a comprehensive view of court cases.
Los Angeles	I don't foresee any issues with eliminating the sampling program.
Monterey	In our court all superior court records are microfilmed (previously) or scanned (currently). The impact of storing these digital files is far less than storage of physical files. If the sampling program was eliminated, these digital files would still be accessible to the public.

Judicial Branch Case File Sampling Program
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Orange	<p>No major issues are foreseen to occur if the program was eliminated in whole. As trends evolve, the technological advances and generational differences in what we are interested in, the way we do things, and society’s need for quick, immediate information influence the decision of what we keep and for how long. Even so, it is important to consider the value of a sampling program on a smaller scale as there may be importance in future changes that will impact old cases and being able to refer back to a sampling of records from a specific period or point in time. It is our recommendation that this can be satisfied through electronic retention of a sampling of cases every 5 or 10 years because this retention would adequately capture information about court practices and procedures for future/historical reference. It may also be that the current reliance on electronic documents is such that copies of the document are ‘out there somewhere’ and there is no need for the court to keep an "original".</p> <p>If we are to retain the sampling program in part, it is suggested that the longitudinal sampling (100% every 21 years) be eliminated and the systematic sampling (10% annually) be reduced to 10% every five or 10 years. Social trends take years to change and every five or 10 years should be sufficient for sampling those trends in the court. The subjective sampling should also be eliminated or at the very least better defined as indicated in previous questions.</p>
Placer	<p>Some historical sample should be retained to allow for possible research of local interest/events/policies. The current sampling method, however, is likely more significant than necessary and, as written, does not guarantee the historically significant cases are preserved.</p>
Riverside	<p>I support the sampling requirement being eliminated or drastically reduced in its requirements. In teaching Records classes for CCA, I have encountered a lot of confusion from persons looking to conduct destruction to create space as housing paper is a major issue for every courthouse. Understanding and obtaining samples has been one of the largest obstacles and challenges for staff looking to destroy in accordance with all GC and CRC’s. In my experience, many Courts are not even aware of the extent of sampling, for example, they are not aware of the Longitudinal Sample (100% requirement for their Courts designated years), nor which years have been designated for their court. The GC (68150-153) is already designed to retain records for the life of the case.</p> <p>Built into the GC is already substantial protection of certain record types or documents that could be referenced by historians. In addition to the long retention time frames already in place, many important document or case types already require permanent retention. Some examples from GC68152 are below:</p> <ul style="list-style-type: none"> • Civil judgments for unlimited – Permanent retention • Adoption – Permanent retention • Parentage (paternity) – Permanent retention • Change of name, gender, or name and gender – Permanent retention • Probate – Decedent Estates, all orders, judgments, decrees of the Court, Wills Codicils, All Conservatorship orders, All Guardianship orders terminating guardianship and many more for this area of law – Permanent Retention. • Capital Felonies (DP Cases) – Permanent Retention <p>Based on this alone, most Courts would rather opt to maintain all records electronically for most Unlimited case types as a method to resolving space issues and the growing paper, rather than endure having to separate the above items from the perspective unlimited case types and then further determine a longitudinal (100%), systematic (10%) and subjective (2%) sample in order to properly destroy the unlimited case types. The items already designated for permanent retention in the GC should provide historians a healthy perspective. If there needs to be more information, then I would suggest simplifying and limiting what should be required to be kept for the sampling.</p> <ul style="list-style-type: none"> • Support keeping the Comprehensive Records Section. <ul style="list-style-type: none"> ○ This section asks for Records prior to 1911. Then it is very flexible with regards to cases between 1910 and 1950 as it does not require these cases be kept, but rather it states, “If practicable”. This allows the Courts discretion based on what is practicable or not. If they do not have space or resources, this is not a forced burden. • If at all possible, I would suggest the requirement for the longitudinal sample be eliminated altogether.

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Riverside (con't)	<ul style="list-style-type: none"> • The systematic Sample is excessive (10%) and burdensome, this also I would suggest eliminating. If it must be kept, I would suggest reducing the required percentage and rewriting the section so it is not so confusing to people. • The subjective Sample should be limited to all cases accepted for review by the California Supreme Court. • The “Fat File sample” should be eliminated. • The “cases deemed by the Court to be of local, national, or international significance” should be more flexible and identify how they are to be determined. For example, instead of it being a requirement, allow it to be an option that if the Court identifies a case as having local, national or international significance, the case should be identified, stamped, etc.. Leave as an option should Courts have the resources and ability to do this. But not a requirement. If it remains a requirement, further define and explain or suggest how this is to be determined at Court level so Courts know how to go about determining this.
Santa Cruz	No. So far we have not have any requests for cases in past samplings. It may encourage courts to purge files because it would be easier for them to do so.
Solano	No.
Sutter	Not for our court as we retain all upper court cases in a physical or electronic format. I believe there could be value in identifying these types of cases in the CMS for easier public access to historical or significant cases. Here in Sutter, we currently have an internal policy of retaining the physical file for all murder cases.
Tehama	None, what so ever.
Tulare	Not at this time.
Ventura	We feel that the sampling program should be eliminated. The retention periods authorized by Government Code sections 68152 and 68153 are sufficient. We do not have the staff or space to continue managing the storage of records beyond these retention periods.

Question 6: Any other thoughts or suggestions you may have regarding the value or modification of the current sampling requirements?	
Court	Responses
Alameda	<p>Based on the small percentage of members of the public, other agencies or organizations that request cases in the sampling program, it should be modified to put less emphasis on keeping a percentage on each year’s filings to maintaining records of historical significance.</p> <p>Further, where a Court maintains and electronic records program those records should count towards sampling – e.g. no longer need to solely rely on paper files.</p>
El Dorado	Not at this time.
Los Angeles	Sampling cases are rarely to never requested; thus the Courts would be better served if the burden to retain cases was placed on historians/researchers as indicated in the answer to question 4.
Monterey	As our court is not destroying superior court records at this time, if the sampling requirement was modified or eliminated the impact would be minimal.
Orange	<p>Additional Suggestions:</p> <ul style="list-style-type: none"> • 10.855(e) – court records defined for this rule include “paper exhibits.” This verbiage was removed from Government Code 68151(a)(2) effective January 1, 2014, and we think it should be removed from this CRC as well. • 10.855(l) – reporting requirements to Judicial Council (form REC-003), remove in its entirety. It is too time-consuming and there is no valid reason why this needs to be reported to the AOC. The courts already retain case indexes and destruction indexes for all their court records permanently. • 10.855(e)(3) – eliminate this section as part of the definition of court record for sampling purposes. • 10.855(g) – remove in its entirety. • CRC 10.856 – notice of superior court records destruction, remove in its entirety. The courts only notify three entities as set by Judicial Council. It seems that none of the entities regularly respond to the notice or request a transfer of records; no point in continuing to notice (this would also include Judicial Council forms REC-001 and REC-002).
Placer	Any changes should also consider how electronic files are impacted. Should they have a greater retention? Less? While storage of electronic files is relatively inexpensive, there will come a time where digital space needs to be freed up for newer cases.

Judicial Branch Case File Sampling Program

Survey Responses

Riverside	<p>Has the Augmented Sample ever been needed? If this is not needed, I would suggest it be considered for elimination as well. Has the AOC ever designated a consultant to review any Courts systematic sample? Regardless, the CRC leaves the final determination to be left to the Clerk of the court rendering the involvement or authority of the consultant very limited to almost useless. This section may not be needed.</p> <p>Reporting Requirements:</p> <ul style="list-style-type: none">• My suggestion would be that Courts not send a list of records destroyed semiannually to the Judicial Counsel, but instead this section should be used to clarify the individual Courts need to maintain a "Destruction Index". This is briefly mentioned in GC68153, but not clearly explained as to what it must entail or who must have access to it etc. If each Court maintained organized destruction indexes by year, the Judicial Council could review at its discretion instead of receiving semiannual lists. This may be less burdensome to both the Courts and the JC.• #2 of this section (I), Including the "comprehensive sample" in this section for semiannual submission seems redundant as this list would not change from year to year. Similar to the above, the CRC should simply require this list be maintained by the Courts.
Santa Cruz	<p>We should look at eliminating keeping an entire year. Our court has to maintain files off site due to limited on site storage space. Eliminating keeping an entire year would help us reduce our off-site storage costs.</p>
Solano	<p>The modification or eliminating the sampling requirements would be a beneficial savings on file storage and staff time.</p>
Sutter	<p>We have had a very small percentage of requests to view these files, particularly in comparison to the amount of work that was involved in the sampling process. The records management process, in general, is complex and time consuming; the sampling process increased that immensely. For Sutter, scanning all cases was the much preferred solution.</p>
Tehama	<p>Not at this time. However, we are interested in the ideas and suggestions that other courts may have.</p>
Ventura	<p>Elimination of the sampling program would benefit our court.</p>

Judicial Branch Sampling Program Survey

Questions from the Superior Court of Orange County

OSC Question 1: Does your court utilize a statewide or regional archival facility for the sampling or do you maintain them at your court's own facilities?	
Court	Responses
El Dorado	El Dorado Court currently maintains all Superior Court case files at a third party vendor off-site storage warehouse facility. This is a significant cost to the court.
Orange	In Orange County, we maintain the physical court files, if no electronic record is available, throughout the various justice centers as well as our own off-site storage warehouse facility.

OSC Question 2: As defined in section (e)(3) of the Rule, court records include depositions, paper exhibits, daily transcripts and tapes of electronically recorded proceedings, if available. Does your court retain these items as well as the case file for sampling purposes?	
Court	Responses
El Dorado	For El Dorado Court, if these items are not in the case file, they are not preserved under this Rule.
Orange	In Orange County, if these items are not in the case file, they are not preserved under this Rule.

OSC Question 3: Sampling records include sealed, expunged, and other confidential records, yet these records are not available to the public (which defeats the purpose of a sampling). Does your court retain these types of records, such as Juvenile Court records, as part of the sampling (the scope of the Rule only excludes small claims, limited civil, infraction, and misdemeanor cases)?	
Court	Responses
El Dorado	El Dorado Court has not started our records management program and sampling of records. However, we would agree with Orange County's suggestion to eliminate the need to sample Juvenile Court cases since they are confidential in nature and not available for review by the public.
Orange	Orange County does not specifically separate these cases from the general population of files; thus, they are pulled for sampling. We would like to eliminate the need to sample Juvenile Court cases since they are confidential in nature and not available for review by the public.

OSC Question 4: As defined in CRC 10.856, has your court received a request from the three entities designated by Judicial Council (California State Archive, Huntington Library, Stanford Law School) to transfer court records in which your court has noticed its intent to destroy? If so, what has been the frequency of these requests?	
Court	Responses
El Dorado	El Dorado Court has not received request from the three entities designated by the Judicial Council. El Dorado County Museum has requested transfer of some of our older court records.
Orange	In Orange County, we have only received one request by Stanford Law School for 10% of domestic violence cases that were eligible for destruction.

Government Code Section 68150(c)

(c) The Judicial Council shall adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, or preservation of court records, including records that must be preserved permanently. The standards or guidelines shall reflect industry standards for each medium used, if those standards exist. The standards or guidelines shall ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance. They shall also ensure that the records are stored and preserved in a manner that will protect them against loss and ensure preservation for the required period of time. Standards and guidelines for the electronic creation, maintenance, and preservation of court records shall ensure that the public can access and reproduce records with at least the same amount of convenience as paper records previously provided.

Rule 10.856. Notice of superior court records destruction

(a) Scope

"Records" of the superior court, as used in this rule, do not include records of limited civil, small claims, misdemeanor, or infraction cases.

(Subd (a) adopted effective January 1, 2007.)

(b) Notice

The superior court must give 30 days' written notice of its intent to destroy court records open to public inspection to entities maintained on a master list by the Judicial Council and to any other entities that have informed the court directly that they wish to be notified.

(Subd (b) amended and relettered effective January 1, 2007; adopted as subd (a); previously amended effective January 1, 2001, and July 1, 2001.)

(c) Transfer to requesting entity

Records scheduled for destruction must be permanently transferred to the entity requesting possession of the records on written order of the presiding judge unless the request is denied for good cause shown. The cost of transferring the records must be paid by the requesting party.

(Subd (c) amended and relettered effective January 1, 2007; adopted as subd (b); previously amended effective January 1, 2001.)

(d) Request by two or more entities

If two or more entities request the same records, the presiding judge must order the transfer of those records to the entity that shows the greatest capability of caring for and preserving the records according to commonly recognized archival principles and practices of preservation and access, and that provides the greatest likelihood of making them available for historical or research purposes.

(Subd (d) amended and relettered effective January 1, 2007; adopted as subd (c); previously amended effective January 1, 2001.)

(e) Public access

No entity may receive the records unless the entity agrees to make the records reasonably available to all members of the public. Provision must be made for duplicating the records at cost.

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

(f) Destruction

If after 30 days no request for transfer of records scheduled for destruction has been received by the court, the clerk may destroy the records not designated for the historical and research program under rule 10.855, under a written order of the presiding judge of the court and in accordance with provisions of the Government Code.

(Subd (f) amended and relettered effective January 1, 2007; adopted as subd (e); previously amended effective January 1, 2001.)

(g) Extension of time

The time for retention of any of the court records specified in the notice may be extended by order of the court on its own motion, or on application of any interested member of the public for good cause shown and on such terms as are just. No fee may be charged for making the application.

(Subd (g) amended and relettered effective January 1, 2007; adopted as subd (f); previously amended effective January 1, 2001.)

(h) Forms

The court must use the following forms to implement the requirements of this rule:

- (1) *Notice of Intent to Destroy Superior Court Records; Offer to Transfer Possession* (form REC-001(N), with a form on the reverse titled *Request for Transfer or Extension of Time for Retention of Superior Court Records* (form REC-001(R)), for optional use by the recipient of the notice; and
- (2) *Notice of Hearing on Request for Transfer or Extension of Time for Retention of Superior Court Records; Court Order; Release and Receipt of Superior Court Records* (form REC-002(N)).

(Subd (h) amended effective July 1, 2010; adopted as subd (g); previously amended effective January 1, 2001; previously amended and relettered effective January 1, 2007.)

Rule 10.856 amended effective July 1, 2010; adopted as rule 243.6 effective January 1, 1994; previously amended effective July 1, 2001; previously amended and renumbered as rule 6.756 effective January 1, 2001, and as rule 10.856 effective January 1, 2007.