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OF CALIFORNIA

COURT EXECUTIVES
ADVISORY COMMITTEE

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COURT EXECUTIVES ADVISORY COMMITTEE (CEAC)

RECORDS MANAGEMENT SUBCOMMITTEE

MINUTES OF OPEN MEETING

August 18, 2014

4:00-5:00 P.M.

Conference Call

Advisory Body Members Present: Richard Feldstein (Chair), Alan Carlson, Jake Chatters, Pat Patterson, Tricia Penrose, and Kim Turner,

Advisory Body Members Absent: Kevin J. Lane and Robert Oyung

Judicial Staff Present: Tara Lundstrom, Patrick O'Donnell, Marlene Smith, and Josely Yangco-Fronza

OPEN MEETING

Call to Order and Roll Call

The chair called the meeting to order at 4:08 p.m., and took roll call.

Written Comments Received

No written comments were received.

Approval of Minutes

No minutes to approve.

DISCUSSION AND ACTION ITEMS (ITEMS 1-4)

Item 1

Trial Court Records Manual (TCRM) Revisions

Electronic Signatures

Patrick O'Donnell provided background information on discussions regarding electronic signatures. The need to develop the standards and guidelines on electronic signatures becomes apparent and important as more and more courts conduct business electronically. Both the Court Technology Advisory Committee (CTAC) and CEAC agreed to work together in developing these standards and guidelines and have included this project in their annual agendas.

Jake Chatters informed the group that CTAC has deferred the development of these standards and guidelines to this subcommittee. Moving forward, the subcommittee will need to define electronic and digital signatures that will sequentially help determine the necessary level of security and authentication needed. The project goal is to make the processes for the courts less complicated and less burdensome than what currently exists.

The subcommittee created an ad hoc subgroup to develop the standards and guidelines on E-signatures for the next update of the TCRM.

Capital Case Exhibits

The subcommittee agreed that there is sufficient oversight on managing exhibits at this time and to defer the development of best practices and guidelines related to capital case exhibits to future updates of the TCRM.

Item 2

California Rules of Court, rule 10.855. Superior Court Records Sampling Program

The subcommittee discussed the issues courts are encountering with the current superior court sampling program. Based on the sampling survey, responding courts support the elimination of the sampling program or significantly modifying its requirements to make it less burdensome for the courts. If the program is kept, the members suggested providing better guidance on what records to keep and how to keep it.

The subcommittee created an ad hoc subgroup to review and propose revisions to the sampling program rule.

Item 3

Review Government Code Section 68150(c)

The subcommittee reviewed and discussed disparity between rule 10.856 and GC section 68150(c) in providing notice of destruction on limited jurisdiction cases. To resolve the conflict between the rule and statute, Ms. Penrose recommended modifying the verbiage of the statute to add “*destruction*” to read, “*The Judicial Council shall adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, **destruction**, or preservation of court records, including records that must be preserved permanently...*”

Due to the time and effort needed to change the statute, the subcommittee agreed to defer changes at a later time to include additional clean up to GC 68152 and consolidate the changes into one bill.

Item 4

Working Group Work Plan – Discussion of Next Steps

The Chair confirmed the members for each of the ad hoc subgroup. Staff will coordinate with each subgroup to develop milestones and timelines for each project and schedule future meetings.

ADJOURNMENT

There being no further business, the meeting was adjourned at 4:55 p.m.

Approved by the advisory body on enter date.

2. Statutes and Rules of Court Governing Trial Court Records Management

* * *

2.1.1 Signatures on Electronically Created Court Documents

Government Code section [68150\(g\)](#) provides that any notice, order, judgment, decree, decision, ruling, opinion, memorandum, warrant, certificate of service, or similar document issued by a trial court or judicial officer of a trial court may be signed, subscribed, or verified using a computer or other technology. ~~Future versions of this manual will contain procedures, standards, or guidelines for signing, subscribing, and verifying court documents by electronic means. Section 6.2.1 of this manual provides standards and guidelines for signing, subscribing, and verifying court documents by electronic means.~~

* * *

6. Creation, Storage, Maintenance, and Security of Records

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6.2 Electronic Signatures: Standards and Guidelines

6.2.1. Electronic Signatures on Court-Created Records

A. Purpose

This section provides standards and guidelines for the creation of electronic signatures by judicial officers and the superior courts. These standards and guidelines implement [Government Code section 68150\(g\)](#), which provides that any notice, order, judgment, decree, decision, ruling opinion, memorandum, warrant, certificate of service, or similar document issued by a court or a judicial officer may be signed, subscribed, or verified using computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council.

The following principles guided the drafters in preparing these standards and guidelines:

- Electronic signature standards should provide appropriate requirements and should generally not be more restrictive than standards for traditional ‘wet’ signatures.
- Electronic signature standards should consider how the signature is being applied when setting the level of authentication required.
- Electronic signature standards should allow for flexibility in the method of applying and the appearance of the signature.

- Electronic signature standards, wherever possible, should avoid requiring specific proprietary tools. Instead the standards should present attributes of acceptable authentication tools and encourage leveraging security within other business critical systems.

B. Definitions

As used in these standards and guidelines, the following definitions apply:

- **Electronic** means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- **Electronic court record** means a court record created, generated, sent, communicated, received, or stored by electronic means.
- **Electronic signature** means an electronic sound, symbol, or process attached to or logically associated with an electronic court record and executed or adopted by a person with the intent to sign the electronic court record. (Code of Civ. Proc., § 17.)
- **Person** includes judicial officers, court clerks, deputy court clerks, and others authorized to sign documents issued by a judicial officer or a court.
- **Record** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- **Security procedure** means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

C. Format of Signatures

Unless otherwise prescribed in a statute or rule, an electronic signature may be in the form of:

- A digitalized image of the person's signature;
- An /s/ followed by the person's name; or
- Any other electronically created method of indicating with clarity the name of the person whose signature is being affixed to the document.

All such signatures, to be legally effective, must satisfy the requirements stated in this section.

D. Electronic Signatures Must Be Executed or Adopted with an Intent to Sign, Attributable to an Authorized Person, and Capable of Verification

The following guidelines apply to electronic signatures executed or adopted by a judicial officer or the court:

- When a person is presented with the opportunity to sign a document electronically, it must be clear to the person that he or she is being asked to sign the document

electronically. This demonstrates that the person in fact intended to sign the document. (See Code of Civ. Proc., § 17 [electronic signatures must be “executed or adopted with the intent to sign”].)

- When a document is to be signed electronically, it must be presented only to an authorized person or to someone authorized to execute the signature on the person’s behalf.
- An electronic signature is attributed to a person if it was the act of that person (or the act of someone authorized to execute or adopt the signature on that person’s behalf), which may be shown in any manner, including by showing the efficacy of any security procedure applied when the signature was executed or adopted.
- The identity of the person who executed or adopted the electronic signature must be capable of verification. If a document is signed electronically, the court should retain any data relevant to verifying the signature, such as the identity of the person who executed or adopted the signature and the date and time that the signature was executed or adopted.

Practice Tip: Courts should consider designing business practices and technology systems—such as workflows, pop-up screens, and access and security procedures—to facilitate compliance with these guidelines.

E. Signatures Under Penalty of Perjury

If a law requires that a statement be signed under penalty of perjury, the requirement is satisfied with respect to an electronic signature, if an electronic record includes:

- The electronic signature;
- All of the information as to which the declaration pertains; and
- A declaration under penalty of perjury by the person who submits the electronic signature that the information is true and correct.

F. Legal Effect

Unless otherwise specifically provided by law, all notices, orders, judgments, decrees, decisions, rulings, opinions, memoranda, warrants, certificates of service, or similar documents that are signed, subscribed, or verified by using a computer or other technological means shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by a court official or judicial officer. (Gov. Code, § 68150(g); see also Code of Civ. Proc., § 34 [“An electronic signature . . . by a court or judicial officer shall be as effective as an original signature”].)

A signature may not be denied legal effect or enforceability solely because it is in electronic form. The legal effect of an electronic signature is determined from the context and circumstances surrounding its creation, execution, or adoption, and otherwise as provided by law.

G. Acceptable Security Procedures for Verification of Identity When Applying Electronic Signature

The acceptable procedures for verifying the identity of persons executing electronic signatures are varied and are subject to change as the technology in this area is developing quickly. Certain guidelines can be applied at this time to determine whether electronic signatures are verifiable.

First, all systems used in the capture, application, and storage of electronic media, including any electronic signatures or electronic documents, are subject to data and information security guidelines as recommended in *How to Use the Information Systems Controls Framework: A Guide to California Superior Courts (Draft-May 27, 2015)*. This requirement ensures that access to any electronic signature, electronically signed document, or the tools and mechanisms for applying an electronic signature is limited to authorized individuals and that original files and documents have not been altered or modified since they were created.

Second, currently acceptable procedures for verification of electronic signatures include the following:

1. Real-time digitized electronic signatures

A digitized signature is a graphical image of a handwritten signature. The signature is captured by means of a digital pen, pad, or other device that converts the physical act of signing into a digital representation of the signature and applies that digital representation to the document, transaction, or database entry.

User authentication before the application of the digitized signature should be similar to authentication methods used when a physical handwritten signature is applied to a hard copy or traditional paper document.

2. System-applied electronic signatures

A system-applied electronic signature is an electronic signature that is applied to a document, transaction or database through use of a computer, software, or application following affirmative action by the individual or a person authorized to act on the person's behalf. The affirmative action could include, for example, the requirement that the signer click on an "OK" box or similar act.

User authentication for applying a system-applied electronic signature may be obtained through one of the following methods:

- **Password or PIN** - The user is authenticated through a password or PIN to gain access to the computer application, database, or network. Alternatively or in addition, the user is authenticated through a password or PIN tied directly to the application of the signature.
- **Symmetric Cryptography** – The user is authenticated using a cryptographic key that is known to the system and the individual signing the document. This is often done via a single use password that is randomly generated.
- **Asymmetric Cryptography (Digital Certificates)** – The user is authenticated using both private and public keys. This is the most secure method of user authentication and should be considered when applying signatures made under penalty of perjury.
- **Biometrics** – The user is authenticated using biometrics, including but not limited to voice, fingerprint, or retina.

The method selected should take into consideration business requirements, cost, and relative risk and consequence of a breach. Courts should document and adopt security procedures for authentication before the implementation of a system-applied electronic signature.

H. Examples of Court-Created Documents that May Be Electronically Signed by a Judicial Officer or Clerk

The following is a list of various court-created documents that may be signed electronically by a judge or clerk under [Government Code 68150\(g\)](#). This list is provided for illustrative purposes only. It is not intended to suggest that a signature is required on these documents, unless a signature is otherwise mandated by statute or rule.

- | | |
|---------------------------------|--|
| • Judgments | • Abstracts of judgment |
| • Deferred entry of judgment | • Summons |
| • Orders after hearings | • Notices |
| • Minute orders | • Fee waivers granted by statute |
| • Exemplification of records | • Certificate of mailing |
| • Probable cause determinations | • Clerk's declarations |
| • Arrest warrants | • Entry of judgment |
| • Search warrants | • Notices of intent to dispose of exhibits |
| • Bench warrants | • Certification of records |
| • Protective orders | • Clerk's certificate of service |
| • Letters for probate | • Felony abstract of judgment |
| • Writs of attachment | • Notice of cost of electronic recording |
| • Writs of possession | • Letters for probate |
| • Writs of execution | • Elisors |
| • Lis pendens | |

6.2.2. Electronic Signatures on Documents Submitted to the Courts

A. Purpose

The purpose of this section is to provide guidance on the signatures that appear on documents that are submitted electronically to the courts. For such signatures, there is currently no equivalent to the comprehensive authorization for the use of electronic signatures that exists for the signatures of judicial officers and court clerks under [Government Code section 68150\(g\)](#) and Code of Civil Procedure section 34. There are, however, various statutes and rules on signatures on electronically submitted documents that apply to particular types of proceedings.

B. Signatures on Documents Filed Electronically in Civil Cases

The statutes and rules on e-filing in civil cases include specific provisions on signatures. [Code of Civil Procedure section 1010.6\(b\)\(2\)](#) provides:

(A) When a document to be filed requires the signature, not under penalty of perjury, of an attorney or a self-represented party, the document shall be deemed to have been signed by that attorney or self-represented party if filed electronically.

(B) When a document to be filed requires the signature, under penalty of perjury, of any person, the document shall be deemed to have been signed by that person if filed electronically and if a printed form of the document has been signed by that person prior to, or on the same day as, the date of filing. The attorney or person filing the document represents, by the act of filing, that the declarant has complied with this section. The attorney or person filing the document shall maintain the printed form of the document bearing the original signature and make it available for review and copying upon the request of the court or any party to the action or proceeding in which it is filed.

Similarly, the California Rules of Court have a specific rule on the requirement for signatures on documents filed electronically with the court. [Rule 2.257](#) provides:

(a) Documents signed under penalty of perjury

When a document to be filed electronically provides for a signature under penalty of perjury, the following applies:

(1) The document is deemed signed by the declarant if, before filing, the declarant has signed a printed form of the document.

(2) By electronically filing the document, the electronic filer certifies that (1) has been complied with and that the original, signed document is available for inspection and copying at the request of the court or any other party.

(3) At any time after the document is filed, any other party may serve a demand for production of the original signed document. The demand must be served on all other parties but need not be filed with the court.

(4) Within five days of service of the demand under (3), the party on whom the demand is made must make the original signed document available for inspection and copying by all other parties.

(5) At any time after the document is filed, the court may order the filing party to produce the original signed document in court for inspection and copying by the court. The order must specify the date, time, and place for the production and must be served on all parties.

(b) Documents not signed under penalty of perjury

If a document does not require a signature under penalty of perjury, the document is deemed signed by the party if the document is filed electronically.

(c) Documents requiring signatures of opposing parties

When a document to be filed electronically, such as a stipulation, requires the signatures of opposing parties, the following procedure applies:

(1) The party filing the document must obtain the signatures of all parties on a printed form of the document.

(2) The party filing the document must maintain the original, signed document and must make it available for inspection and copying as provided in (a)(2). The court and any other party may demand production of the original signed document in the manner provided in (a)(3)-(5).

(3) By electronically filing the document, the electronic filer indicates that all parties have signed the document and that the filer has the signed original in his or her possession.

(d) Digital signature

A party is not required to use a digital signature on an electronically filed document.

(e) Judicial signatures

If a document requires a signature by a court or a judicial officer, the document may be electronically signed in any manner permitted by law.

C. Signatures on Documents in Criminal and Traffic Cases

In criminal and traffic proceedings, the Legislature has authorized the use of electronic or digital signatures in particular types of matters.

1. Probable Cause Declarations for Warrants for Arrest

[Penal Code section 817](#) addresses the procedures to be used when a peace officer submits a declaration of probable cause to obtain a warrant of arrest before criminal charges are filed.¹ These warrants are sometimes called *Ramey* warrants, referring to *People v. Ramey* (1976) 16 Cal.3d 263. (*Goodwin v. Superior Court* (2001) 90 Cal.App.4th 215, 218.) Penal Code section 817 requires the peace officer to submit a sworn statement made in writing in support of the warrant of probable cause. (Pen. Code, § 817(b).) As an alternative under Penal Code section 817(c)(2), the magistrate may take an oral statement under oath if the oral oath is made using telephone and facsimile transmission equipment, or made using telephone and electronic mail, and the following conditions are met:

(A) The oath is made during a telephone conversation with the magistrate, after which the declarant shall sign his or her declaration in support of the warrant of probable cause for arrest. The declarant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed warrant and all supporting declarations and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the declarant the receipt of the warrant and the supporting declarations and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the declarant's signature, digital signature, or electronic signature is acknowledged as genuine.

¹ Penal Code section 817 does not apply to bench warrants or warrants for arrest that are sought via a criminal complaint. (Pen. Code, § 817(b); see also *id.*, §§ 740, 813.)

(C) If the magistrate decides to issue the warrant,² he or she shall:

- (i) Cause the warrant, supporting declarations, and attachments to be subsequently printed if those documents are received by electronic mail or computer server.
- (ii) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.
- (iii) Note on the warrant the exact date and time of the issuance of the warrant.
- (iv) Indicate on the warrant that the oath of the declarant was administered orally over the telephone.

The completed warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed warrant to the declarant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the declarant to write the words "duplicate original" on the copy of the completed warrant transmitted to the declarant and this document shall be deemed to be a duplicate original warrant.

2. Probable Cause Declarations for Search Warrants: Penal Code Section 1526(b)

[The text below will need to be modified if AB 39 is enacted.]

Before issuing a search warrant, the magistrate must take the officer's affidavit in writing and cause the affidavit to be subscribed by the affiant. (Pen. Code, § 1526(a); see *Powelson v. Superior Court* (1970) 9 Cal.App.3d 357, 360–361.) As an alternative to this written affidavit, [Penal Code section 1526\(b\)\(2\)](#) authorizes the magistrate to take an oral statement under oath if the oral oath is made using telephone and facsimile transmission equipment, telephone and electronic mail, or telephone and computer server, and if the following conditions are met:

- (A) The oath is made during a telephone conversation with the magistrate, whereafter the affiant shall sign his or her affidavit in support of the application for the search warrant.

² The magistrate may issue the warrant, if and only if, he or she is satisfied from the declaration that there exists probable cause that the offense described in the declaration has been committed and that the defendant described in the declaration has committed the offense. (Pen. Code, § 817(a)(1).)

The affiant's signature shall be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate. The proposed search warrant and all supporting affidavits and attachments shall then be transmitted to the magistrate utilizing facsimile transmission equipment, electronic mail, or computer server.

(B) The magistrate shall confirm with the affiant the receipt of the search warrant and the supporting affidavits and attachments. The magistrate shall verify that all the pages sent have been received, that all pages are legible, and that the affiant's signature, digital signature, or electronic signature is acknowledged as genuine.

(C) If the magistrate decides to issue the search warrant, he or she shall:

- (i) Sign the warrant. The magistrate's signature may be in the form of a digital signature or electronic signature if electronic mail or computer server is used for transmission to the magistrate.
- (ii) Note on the warrant the exact date and time of the issuance of the warrant.
- (iii) Indicate on the warrant that the oath of the affiant was administered orally over the telephone.

The completed search warrant, as signed by the magistrate, shall be deemed to be the original warrant.

(D) The magistrate shall transmit via facsimile transmission equipment, electronic mail, or computer server, the signed search warrant to the affiant who shall telephonically acknowledge its receipt. The magistrate shall then telephonically authorize the affiant to write the words "duplicate original" on the copy of the completed search warrant transmitted to the affiant and this document shall be deemed to be a duplicate original search warrant. The duplicate original warrant and any affidavits or attachments in support thereof shall be returned as provided in Penal Code section 1534.

3. Electronic Signatures on Notices to Appear

[Vehicle Code section 40500](#) addresses Notice to Appear for traffic violations and requires that the arresting officer prepare in triplicate a written notice to appear in court. (Veh. Code, § 40500(a); *id.* § 40600(a) [similar provisions].) The arresting officer must deliver a copy to the arrested person, a copy to the court, and a copy to the commissioner, chief of police, sheriff or

other superior officer of the arresting officer. (*Id.*, §§ 40500(d), 40506.) A Notice to Appear may also be issued for non-traffic infraction and misdemeanor offenses. (Pen. Code, §§ 853.5, 853.6.)

[Penal Code section 959.1\(d\)](#) authorizes a court to receive and file an electronically transmitted Notice to Appear issued on a form approved by the Judicial Council if the following conditions are met:

- (1) The notice to appear is issued and transmitted by a law enforcement agency pursuant to specified Penal Code or Vehicle Code sections;
- (2) The court has all of the following:
 - (A) The ability to receive the notice to appear in electronic format.
 - (B) The facility to electronically store an electronic copy and the data elements of the notice to appear for the statutory period of record retention.
 - (C) The ability to reproduce the electronic copy of the notice to appear and those data elements in printed form upon demand and payment of any costs involved.
- (3) The issuing agency has the ability to reproduce the notice to appear in physical form upon demand and payment of any costs involved.
- (4) The notice to appear that is received under subdivision (d) is deemed to have been filed when it has been accepted by the court and is in the form approved by the Judicial Council.
- (5) If transmitted in electronic form, the notice to appear is deemed to have been signed by the defendant if it includes a digitized facsimile of the defendant's signature on the notice to appear. A notice to appear filed electronically under subdivision (d) need not be subscribed by the citing officer. An electronically submitted notice to appear need not be verified by the citing officer with a declaration under penalty of perjury if the electronic form indicates which parts of the notice are verified by that declaration and the name of the officer making the declaration.

853.9

A Judicial Council Notice to Appear form that is issued when a person is arrested for misdemeanor or infraction violations of the Vehicle Code or for nontraffic misdemeanors or infractions serves as a complaint. (Veh. Code § 40500(b); Pen. Code, § 853.9(b).) Under [rule](#)

[4.103 of the California Rules of Court](#), the Judicial Council has approved the following types of Notice to Appear forms:

Form TR-115	Automated Traffic Enforcement System Notice to Appear
Form TR-130	Traffic/Nontraffic Notice to Appear
Form TR-120	Nontraffic Notice to Appear
Form TR-106	Continuation of Notice to Appear
Form TR-108	Continuation of Citation

Form TR-130 is used for both electronic and handwritten citations. (See www.courts.ca.gov/documents/trinst.pdf; Cal. Rules of Court, rule 4.103.)

6.2.3. Signatures on Scanned Documents

Government Code section 68150(a) authorizes the preservation and maintenance of trial court records in electronic form. Under this provision, trial courts may convert their paper records to electronic form by scanning. The act of scanning an original signature results in a digitized signature. This digitized signature shall have the same validity, and the same legal force and effect, as the original signature.



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date July 20, 2015	Action Requested Please review for July 23 meeting
To CEAC Records Management Subcommittee	Deadline July 23, 2015
From Rick Feldstein, Chair Ad Hoc Subgroup on Superior Court Records Sampling Program	Contact Josely Yangco-Frona (415) 865-7626 josely.yangco-fronda@jud.ca.gov
Subject Comprehensive Historical and Sample Superior Court Records: Proposed amendments to rule 10.855 of the California Rules of Court	

Executive Summary

Last year, the CEAC Records Management Subcommittee created an ad hoc subgroup to review and propose revisions to rule 10.855 of the California Rules of Court. Currently, rule 10.855 requires that the superior courts preserve forever all comprehensive records as well as longitudinal, systematic, subjective, and augmented sample records. The subgroup recommends amending rule 10.855 by (1) eliminating the systematic, subjective, and augmented samples; (2) revising the longitudinal sample; (3) revising the comprehensive records requirement; and (4) eliminating the requirement that superior courts submit to the Judicial Council semiannually form REC-003, *Report to the Judicial Council: Superior Court Records Destroyed, Preserved, and Transferred*.

Overall, the subgroup's proposal would substantially reduce the number of court records that superior courts are required to keep under rule 10.855, while still ensuring that courts preserve a

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 2

statistically significant sample of court records for future research purposes. By eliminating the reporting requirement, the proposal would also decrease the amount of time necessary to destroy court records.

Background

Before the enactment of Assembly Bill No. 796 in 1989, all court records had to be microfilmed before they could be destroyed. In order to reduce the high annual costs of storage and microfilming, the County Clerks Association and the Association of Municipal Clerks co-sponsored AB 796. As introduced, AB 796 would have allowed for the destruction of all court records after their retention periods expired. Concerned that the destruction of court records would adversely affect their research into litigation trends, the Association of California Tort Reform and the Rand Corporation's Institute for Civil Justice initially opposed the bill, prompting its amendment by the California Assembly.

The enactment of AB 796 added section 69503(e) to the Government Code, which provided that superior courts must keep "a scientifically valid sample of cases" in order "to preserve judicial records of historical or other research interest." Under former section 69503, counties were required to preserve at least 10 percent of court records, but no less than 100 cases, each year. AB 796 also directed the Judicial Council to develop a plan for implementing sampling statewide. The Judicial Council adopted a rule to that effect in 1992. Although this rule has since been amended and renumbered as rule 10.855, it remains substantially the same today.¹

In 1994, the Legislature repealed Government Code section 69503(e) and replaced it with section 68150(f), which has since been relettered as subdivision (i). Since its enactment, this provision has required only that superior courts preserve comprehensive historical and sample court records for research purposes, but has not defined these categories or specified how many court records must be preserved.

The Proposal

Rule 10.855 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,

¹ For example, the rule was amended in 2000 after unification of the superior and municipal courts to clarify that the scope of the rule had not expanded to include records that were previously filed in municipal courts. Accordingly, the rule was amended to exclude "records of limited civil, small claim, misdemeanor, or infraction cases" from the scope of the rule. (See Cal. Rules of Court, rule 10.855(b).) Today, the rule continues to exclude these records from its scope.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 3

and to preserve evidence of significant events and social trends.”² Because it is not possible to predict the extent of future research goals and necessary resources, the subgroup recommends a proposal that would substantially reduce the overall number of court records preserved, while still retaining a sample of court records that is statistically significant statewide. This proposal seeks to strike a reasonable balance between storage costs and possible future research requirements. It was developed in consultation with the Office of Court Research.

The subgroup’s proposal would amend rule 10.855 by eliminating the systematic, subjective, and augmented samples and by revising the longitudinal sample and comprehensive records requirement. In addition, the proposal would eliminate the reporting requirement. The benefits of this proposal include (1) reducing the storage needs of superior courts by over 90 percent; (2) eliminating the need for superior courts to identify and select systematic and subjective sample court records every year; (3) eliminating subjective criteria that cause implementation difficulties; (4) requiring courts to preserve sample court records only once every 19 years; and (5) reducing the staff time needed to destroy court records. The subgroup strongly endorses this proposal as it would alleviate the substantial burden imposed on the courts by the current sampling program.

Longitudinal sample

Rule 10.855(f) currently requires that all courts preserve a longitudinal sample of court records. In the longitudinal sample, three courts assigned in rotation by the Judicial Council must preserve 100 percent of their court records for a calendar year. In practice, each court is selected roughly every 19 years. The current schedule is available at Attachment 2.

The subgroup recommends retaining this requirement, but modifying it to ensure that the sample is statistically significant. Similar to the current longitudinal sample, three courts would continue to be randomly selected in a given year and each court would still only be required to preserve the longitudinal sample roughly every 19 years. However, the proposal would revise the longitudinal sample in three significant ways, described below.

Selection by court cluster. First, courts would be selected among court clusters based on size to ensure a representative sample of small, medium, and large courts every year. To provide for an even distribution of courts among the clusters and to preserve the 19-year rotation schedule, the subgroup recommends dividing courts into the clusters illustrated in the following table:

² Cal. Rules of Court, rule 10.855(a).

Table 2. Recommended New Sampling Clusters

New Cluster	Description	# Courts
1	Two-judge courts with some small courts	19
2	Mostly small courts with some medium	19
3	Large courts with some medium courts	20

Preservation of a partial sample. Second, courts would only be required to maintain a portion of records for their selected year, instead of 100 percent of their court records as is currently required. All courts except for the Superior Court of Los Angeles County would be required to retain 25 percent of their records (i.e., every fourth case filed) for the year they are selected to participate in the longitudinal sample. The Superior Court of Los Angeles County would only be required to retain 10 percent of their records (i.e., every tenth case filed) for the year that it is selected.

The subgroup recommends making an exception for the Superior Court of Los Angeles County based on the considerably greater number of cases filed with the court compared to other courts. Notably, even if the Superior Court of Los Angeles County preserves its court records at only the 10-percent rate, the total court records preserved for its longitudinal sample would still outnumber the total court records preserved at the 25-percent rate by the Superior Court of San Diego County—the court with the second largest number of case filings in the state—for its longitudinal sample. Accordingly, the exception for the Superior Court of Los Angeles County would result in considerable cost savings for the court, without affecting the statistical validity of the sample.

Based on information provided by the Office of Court Research, the subgroup estimates that retaining only the modified longitudinal sample will significantly reduce the overall number of court records that must be preserved for future research purposes by superior courts. As illustrated in the following table, the number of cases would decrease from an estimated 3,500,000 cases to 240,000 over the 19-year period.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 5

Table 3. Recommended New Sampling Program

Sample estimates		Recommended New Sampling Program	Current Sampling Program
Statewide		240,000 cases	3,500,000 cases
Cluster 3	Los Angeles	27,500 cases	870,000 cases
	Kern	7,500 cases	95,000 cases
Cluster 2	Marin	1,400 cases	17,400 cases
Cluster 1	Calaveras	375 cases	4,700 cases

These estimates are based on the 19-year cycle where each one of the 58 superior courts would be selected to take part in the sampling program. Caseload data is from a three-year average (FY 2011–2012 through FY 2013–2014).

Preservation of judgment books, minute books, and registers of action. As described further below, the subgroup recommends eliminating the requirement in rule 10.855(c) that the court must retain all judgment books kept separately from the case files, all minute books kept separately from the case files, and all registers of action. To ensure that all records relevant to the longitudinal sample cases are retained, the subgroup recommends preserving all judgment books, minute books, and registers of action for the assigned year.

Systematic sample records

Rule 10.855(f) also requires that any court not participating in the longitudinal sample in a given year must preserve a systematic sample consisting of 10 percent or more, but no less than 100 cases, of that year's court records. The subgroup recommends amending rule 10.855 to eliminate this requirement in its entirety.

Eliminating the systematic sampling requirement would benefit superior courts. Because they would no longer need to set aside 10 percent of their cases each year, superior courts would realize significant savings in terms of operational and storage costs. Moreover, these savings would not result in the loss of a statistically valid statewide sample, because courts would still be required to preserve the longitudinal sample.

Subjective sample records

Rule 10.855(f) also requires that those courts not participating in the longitudinal sample must preserve a subjective sample of at least 2 percent, but no fewer than 20 cases, of each year's court records. The subjective sample 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.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 6

Eliminating the subjective sample. With one exception (described below), the subgroup recommends eliminating the subjective sample due to implementation problems. The lack of clear-cut guidelines and criteria has made it difficult for courts to determine which cases are “fat files” or are “of local, national, or international significance.” The subgroup members also reasoned from their experience that the thickness of a case file was a better indicator of the litigiousness of the parties, not the significance of the issues involved.

Because the destruction of court records is discretionary under Government Code section 68152, superior courts would still be authorized to retain any court records identified internally as significant (e.g., high-profile cases covered by the media). (See also Cal. Rules of Court, rule 10.855(a) [“This rule is not intended to restrict a court from preserving more records than the minimum required”].) Under the subgroup’s proposal, however, superior courts would no longer be required to preserve 2 percent of their court records each year and would be free from employing arbitrary indicators of significance, such as the size of the case file.

Preservation of court records for cases granted review by the California Supreme Court. The subgroup recommends retaining, but slightly modifying, the requirement that courts preserve records for “all cases accepted for review by the California Supreme Court.” To better reflect which cases are of potential interest for historical and research purposes, the subgroup recommends revising this requirement to provide for the preservation of records in “all non-capital cases in which the California Supreme Court has issued a written decision.”

The California Supreme Court grants review in hundreds of cases for which it never issues, and never intends to issue, a written decision. Instead, it holds these cases in abeyance pending its adjudication of a lead case expected to resolve issues presented in these “grant and hold” cases. This practice has evolved since the sampling program was first introduced in the early 1990s and has come to include a growing number of cases. Under the proposed language, superior courts would preserve the records of only those cases where the court had issued a written decision; they would not be required to preserve records in the “grant and hold” cases.

In addition, the proposed amendment excludes capital cases for several reasons. Capital cases are currently excluded from this requirement because these cases are not “accepted for review”; instead, capital cases are automatically appealable to the California Supreme Court. Moreover, all capital cases resulting in a death sentence must be retained forever under Government Code section 68152(c)(1). The subgroup recommends adding an Advisory Committee Comment to explain why capital cases are not included in this requirement.

Comprehensive historical records

Rule 10.855(c) requires that courts preserve forever all comprehensive court records, which are defined as: (1) all records filed before 1911; (2) if practicable, all records filed after 1910 and

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 7

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.

The subgroup recommends retaining, but revising this requirement. The subgroup's proposal would eliminate the following types of records from the definition of comprehensive records: all judgment books if the court maintains judgment records separate from the case files; minute books if the court maintains minutes separate from the case files; and all registers of action.

Judgment books. The subgroup recommends eliminating subdivision (c)(4) because it is redundant and unnecessary. All judgments for unlimited civil and felony cases³—whether they are kept in the case files or kept separately⁴—must already be preserved permanently under Government Code section 68152.⁵

Minute books. The subgroup recommends eliminating subdivision (c)(5) because it creates varying records retention practices among courts statewide. Government Code section 68152 does not differentiate between minutes kept in the case files and those kept separately in minute books;⁶ both are eligible for destruction under the statute once the retention period for the underlying case type has expired.⁷ Nonetheless, rule 10.855(c)(5) requires those courts that keep minute books to preserve them permanently, resulting in different records retention practices depending on whether the court keeps minute books or files minute orders in case files.

Registers of action. The subgroup recommends eliminating subdivision (c)(6) because it also creates divergent records retention practices among courts statewide. In lieu of keeping a register of actions, the court “may maintain a register of actions by preserving all the court records filed,

³ Rule 10.855 does not apply to records of limited civil, small claims, misdemeanor, or infraction cases. (Cal. Rules of Court, rule 10.855(b).)

⁴ Judgments must be entered into a judgment book. (Code of Civ. Proc., § 668.) But this requirement does not apply if the court files the judgment in the court file, so long as either (1) a microfilm copy of the individual judgment is made, or (2) the judgment is first entered in the register of actions or into the court's electronic data-processing system. (*Id.*, § 668.5.)

⁵ See Gov. Code, § 68152(a)(3), (c)(2), (g)(8).

⁶ The clerk of the superior court is required to keep the minutes of the court, entering “any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made.” (Gov. Code, § 69844.) The clerk may maintain the permanent minutes of court orders in minute books, which are kept separately from case files. (2 Witkin, Cal. Proc. (5th ed. 2008) Courts, § 364, p. 464.) Alternatively, where a court order or local rule requires placing individual minute orders chronologically in the case file, clerks do not need to keep a minute book. (Gov. Code, § 69844.7.)

⁷ (Gov. Code, § 68152(g)(11) [minute orders kept separately].) Because Government Code section 68151(a) defines “court record” as including “[a]ll filed papers and documents in the case folder,” the court record would include minute orders placed in the case file under section 69844.7. These minute orders would then become eligible for destruction once the retention period for the underlying case type has expired.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 8

lodged, or maintained in connection with the case.”⁸ Government Code section 68152(g)(16) provides that registers of action must be retained for the same retention period as for records in the underlying case.⁹ Yet, as with minute books, rule 10.855(c)(6) requires those courts that keep registers of action to preserve them permanently, resulting in varying records retention practices depending on whether the court keeps registers of action or preserves all court records filed, lodged, or maintained in connection with the case in the case file.

Retaining all judgment books, minute books, and registers of action made sense under the current sampling program, which requires retaining a systematic sample of 10 percent of all cases annually. For those courts that keep separate judgment books, minute books, and registers of action, retaining just the case file for systematic sample cases would not preserve all records related to the case. And it would not be practical from an operational perspective, to review all judgment books, minute books, and registers of action in order to preserve only those entries related to systematic sample cases, while destroying all other entries. Yet, the subgroup’s proposal to eliminate the systematic sample would obviate the need to maintain these records in all years, except for the year that the court is assigned to preserve the longitudinal sample.

Otherwise, the subgroup recommends maintaining the requirement in rule 10.855(c) that courts preserve all records filed before 1991; if practicable, all records filed after 1910 and before 1950; and all case indexes. Government Code section 68150(i) requires the preservation of comprehensive historical court records (although it does not define this category of records). In addition, members of the ad hoc subgroup reasoned that the preservation of these comprehensive historical records under rule 10.855(c) does not impose a significant burden on the superior courts. The costs related to storing these records are relatively minimal.

The subgroup also recommends adding to rule 10.855(c) the requirement that courts preserve the court records for cases granted review by the California Supreme Court. These records are currently labeled as “subjective sample” records. The subgroup recommends relocating this requirement to subdivision (c), with the modification describe above, since it is not subjective in nature and the subgroup otherwise recommends eliminating the subjective sample.

Augmented sample records

Rule 10.855(g) grants the Judicial Council discretion “to 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

⁸ *Id.*, § 69845.5.

⁹ Government Code section 68152(g)(16) does provide an exception for civil and small claims cases, which must be retained for at least 10 years. This exception would have no bearing here since rule 10.855 only applies to unlimited civil cases, which already must be retained for a period of 10 years. (*Id.*, § 68152(a)(2).)

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 9

variety of the cases filed.” Since the rule was adopted in 1994, the Judicial Council has not opted to exercise its discretion under subdivision (g). Nor is the subgroup aware of any superior courts that have preserved an augmented sample under this subdivision. The subgroup recommends amending the rule to eliminate the augmented sample in light of its historical irrelevance.

Reporting requirement

Rule 10.855(l) requires each superior court to submit semiannually to the Judicial Council form REC-003, *Report to Judicial Council: Superior Court Records, Destroyed, Preserved, and Transferred*,¹⁰ which includes 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.

The subgroup recommends eliminating this requirement. Complying with this requirement is time-consuming and burdensome for superior courts, and Judicial Council staff has not received any requests for these forms. The subgroup agrees that tracking these court records is important, so that courts can properly respond to public requests for court records that have been destroyed or transferred. However, it concludes that tracking should occur at the local level and should be left in the discretion of individual superior courts to establish appropriate tracking mechanisms. If this proposed rule amendment were adopted by the council, the subgroup would recommend revising the *Trial Court Records Manual* to suggest best practices for superior courts to consider in deciding how to track court records that are destroyed, preserved as comprehensive and sample records, or transferred to other entities under rule 10.856.

Retroactive implementation

Whereas some superior courts regularly review their court records for destruction, others do not and have instead preserved all records by default. Under the subgroup’s proposal, the amended rule would apply retroactively, but only for those courts that have kept their records. It would not apply retroactively to those courts that have been actively destroying eligible records and complying with the current sampling requirements. Instead, these courts would only be required to comply with the new sampling requirements going forward, starting with the date that the new rule goes into effect. New subdivision (j) would be added to clarify the application of the rule.

Other proposed amendments

Government Code section 68151(a) defines the term “court record” for purposes of the statutes governing records creation, retention, and destruction (Gov. Code, § 68150 et seq). Senate Bill 1489 (Harman; Stats. 2012, ch. 283) amended subdivision (a)(2), effective January 1, 2013, to

¹⁰ Form REC-003 is available at <http://www.courts.ca.gov/documents/rec003.pdf>.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 10

delete the reference to “paper exhibits.” The subgroup similarly recommends eliminating the reference to “paper exhibits” from the definition of “court record” in rule 10.855(e)(3).

Lastly, the proposal would combine current subdivisions (i) and (k) into one subdivision since both address the storage of comprehensive and sample court records in local archival facilities.

Alternatives Considered

The subgroup considered three alternatives to the proposed amendments to rule 10.855. None of the alternatives retained the subjective sample due to its significant implementation difficulties. In addition, because Government Code section 68150(i) requires the preservation of “comprehensive historical and sample court records,” none of the alternatives contemplated eliminating the requirement that superior courts retain a sample of their court records or completely eliminating the list of comprehensive records identified in rule 10.855(c). Instead, the alternatives focused on varying ways of defining the sample.

Alternative One: Maintain the Longitudinal Sample As-Is

The first alternative would still eliminate the systematic, subjective, and augmented samples, but it would maintain the current longitudinal sample without any modification. The subgroup decided against recommending this alternative for two reasons. First, the current method for selecting which courts participate in the longitudinal sample each year may not result in a representative sample over shorter time periods. It is possible that larger, more urban courts could be excluded from the sample for consecutive years. Second, courts would still have to retain 100 percent of their records during their selected year, even though retaining court records at a lesser rate would still result in a statistically valid sample.

Alternative Two: Maintain the Current Systematic Sample

The second alternative would maintain the systematic sample, but would eliminate the longitudinal, subjective, and augmented samples. Under this alternative, all superior courts would be required to retain 10 percent of their records every year. This alternative has the advantage of allowing for research into trends within particular courts, which would not be possible under the subgroup’s proposal where records from an individual court would only be available every 19 years.

Nonetheless, the subgroup decided against recommending this alternative for two reasons. First, this alternative would still impose a substantial burden on the courts in terms of operational and storage costs. A total of 110,000 court records would be preserved each year under this alternative. Although this represents a reduction from the 185,000 court records preserved under the current sampling plan, it is still considerably more than the 15,000 court records that would be preserved each year under the subgroup’s proposal.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 11

Second, the subgroup inferred from the stated purpose of rule 10.855—“to document the progress and development of the judicial system, and to preserve evidence of significant events and social trends”—that the council intended to preserve records for research into broader questions of a statewide nature. The subgroup’s proposal would advance this purpose by preserving a statistically valid statewide sample.

Alternative Three: Modify the Systematic Sample

The last alternative would eliminate the longitudinal, subjective, and augmented samples and would maintain the systematic sample, but with modifications. Under this alternative, the 10-percent annual sampling rate for the systematic sample would vary depending on the size of the court. Because a linear relationship does not exist between sample size and population size, a very small population may require a sample size as large as 50 percent of the total population, whereas a very large population may require only a very small sample size. For example, the U.S. voting population can be surveyed with a sample size of around 1,000 randomly selected individuals or less than 0.01 percent of the population. Translating this to the present context, smaller courts would need to maintain a greater percentage of their records on an annual basis than would larger courts. A two-judge court might have to retain up to 15 percent of its records per year, whereas a large court might have to retain less than 1 percent.

This alternative presents the same benefit as alternative two in that researchers could study trends within a particular court. At the same time, it would more closely approximate the reduction in total court records presented in the subgroup’s proposal. Roughly 17,500 court records would be retained each year under alternative three, in comparison to 15,000 under the subgroup’s proposal. The subgroup ultimately decided against this alternative because (1) it would differentially impact the courts, with smaller courts retaining a larger systematic sample than they do currently, and (2) courts would still have to comply with the sampling process on a yearly basis, resulting in significant operational costs.

Subcommittee Task

The CEAC Records Management Subcommittee is tasked with analyzing this proposal and:

- Asking staff or subcommittee members for further information and analysis;
- Asking the Executive Committee of the Court Executives Advisory Committee to review and approve the proposal as drafted or as amended by the subcommittee and to recommend to RUPRO that the proposal be approved for circulation; or
- Rejecting the proposal.

Members of the CEAC Records Management Subcommittee

July 20, 2015

Page 12

Attachments

1. Proposed amendments to Cal. Rule of Courts, rule 10.855
2. Rotation assignment for longitudinal sample (Jan. 1, 2000),
http://serranus.courtinfo.ca.gov/programs/courtrec/documents/courtrec_future.pdf

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

2
3 **(a) Purpose**

4
5 This rule establishes a program to preserve in perpetuity for study by historians and
6 other researchers all superior court records filed before 1911 and a sample of
7 superior court records filed after December 31, 1910, to document the progress and
8 development of the judicial system, and to preserve evidence of significant events
9 and social trends. This rule is not intended to restrict a court from preserving more
10 records than the minimum required.

11
12 **(b) Scope**

13
14 “Records” of the superior court, as used in this rule, does not include records of
15 limited civil, small claims, misdemeanor, or infraction cases.

16
17 **(c) Comprehensive and significant records**

18
19 Each superior court must preserve forever comprehensive and significant court
20 records as follows:

- 21
22 (1) All records filed before 1911;
- 23
24 (2) If practicable, all records filed after 1910 and before 1950;
- 25
26 (3) All case indexes; and
- 27
28 ~~(4) All judgment books if the court maintains judgment records separate from the~~
29 ~~case files;~~
- 30
31 ~~(5) All minute books if the court maintains minutes separate from the case files;~~
32 ~~and~~
- 33
34 ~~(6) All registers of action if the court maintains them.~~
- 35
36 (4) All non-capital cases in which the California Supreme Court has issued a
37 written decision.

38
39 **(d) Sample records**

40
41 If a superior court destroys court records without preserving them in a medium
42 described in ~~(h)~~ (g), the court must preserve forever a sample of each year’s court

1 records as provided by this rule of all cases, including sealed, expunged, and other
2 confidential records to the extent permitted by law.

3
4 **(e) Court record defined**

5
6 The “court record” under this rule consists of the following:

- 7
8 (1) All papers and documents in the case folder; but if no case folder is created
9 by the court, all papers and documents that would have been in the case
10 folder if one had been created; and
11
12 (2) The case folder, unless all information on the case folder is in papers and
13 documents preserved in a medium described in ~~(h)~~ (g); and
14
15 (3) If available, corresponding depositions, ~~paper exhibits~~, daily transcripts, and
16 tapes of electronically recorded proceedings.

17
18 **(f) Sampling technique**

19
20 Three courts assigned in rotation by the Judicial Council must preserve ~~400 a~~
21 random sample of 25 percent of their court records for a calendar year
22 (“longitudinal sample”), with the exception of the Superior Court of Los Angeles,
23 which must preserve a random sample of 10 percent of its court records for a
24 calendar year. Each assigned court must also preserve all judgment books, minute
25 books, and registers of action, if maintained separately from the case files, for the
26 calendar year. All other courts must preserve a systematic sample of 10 percent or
27 more of each year’s court records and a 2 percent subjective sample of the court
28 records scheduled to be 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~~
34 ~~more than 1,000 cases, the sample must consist of all cases in~~
35 ~~which the last digit of the case number (0–9) coincides with the~~
36 ~~last digit of the year in which the case was filed.~~

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

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

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

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

23
24 (1) The Judicial Council may designate a consultant to review, under the
25 guidance of a qualified historian or archivist, court records scheduled for
26 destruction and determine if the court’s systematic sample should be
27 augmented to improve representation of the variety of cases filed.

28
29 (2) The court should give the designated consultant 60 days’ notice of intent to
30 destroy any court records that it does not plan to retain for the sample.

31
32 (3) The designated consultant’s role is advisory to the court. If the consultant
33 determines that the systematic sample does not represent the variety of cases
34 filed in a sample year, the court should select a random sample of cases to
35 augment the systematic sample.

36
37 (4) Final selection of the court records to augment the sample is to be made by
38 the clerk of the superior court.

39
40 **~~(h) (g) Preservation medium~~**

41

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

9 **(i) Storage**

10
 11 ~~Until statewide or regional archival facilities are established, each court is~~
 12 ~~responsible for maintaining its comprehensive and sample court records in a secure~~
 13 ~~and safe environment consistent with the archival significance of the records. The~~
 14 ~~court may deposit the court records in a suitable California archival facility such as~~
 15 ~~a university, college, library, historical society, museum, archive, or research~~
 16 ~~institution whether publicly supported or privately endowed. The court must ensure~~
 17 ~~that the records are kept and preserved according to commonly recognized archival~~
 18 ~~principles and practices of preservation.~~

19
 20 **(j) (h) Access**

21
 22 The court must ensure the following:

- 23
- 24 (1) The comprehensive, significant, and sample court records are made
 25 reasonably available to all members of the public.
 26
- 27 (2) Sealed and confidential records are made available to the public only as
 28 provided by law.
 29
- 30 (3) If the records are preserved in a medium other than paper, equipment is
 31 provided to permit public viewing of the records.
 32
- 33 (4) Reasonable provision is made for duplicating the records at cost.
 34

35 **~~(k) (i) Choosing an archival facility~~ Storage**

- 36
- 37 (1) Until statewide or regional archival facilities are established, each court is
 38 responsible for maintaining its comprehensive and sample court records in a
 39 secure and safe environment consistent with the archival significance of the
 40 records. The court may deposit the court records in a suitable California
 41 archival facility such as a university, college, library, historical society,
 42 museum, archive, or research institution whether publicly supported or

1 privately endowed. The court must ensure that the records are kept and
 2 preserved according to commonly recognized archival principles and
 3 practices of preservation.
 4

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

13
 14 **(4) Reporting requirement**

15
 16 ~~Each superior court must submit semiannually to the Judicial Council a Report to~~
 17 ~~the Judicial Council: Superior Court Records Destroyed, Preserved, and~~
 18 ~~Transferred (form REC-003), including the following information:~~

- 19
 20 ~~(1) A list by year of filing of the court records destroyed;~~
 21
 22 ~~(2) A list by year of filing and location of the court records of the comprehensive~~
 23 ~~and sample court records preserved; and~~
 24
 25 ~~(3) A list by year of filing and location of the court records transferred to entities~~
 26 ~~under rule 10.856.~~

27
 28 **(i) Application**

29
 30 The sampling program provided in this rule, as amended effective July 1, 2016,
 31 applies to all superior courts on and after July 1, 2016. It also applies retroactively
 32 to any superior courts that did not participate in the sampling program set forth in
 33 previous versions of this rule because it preserved court records indefinitely.
 34

35 **Advisory Committee Comment**

36
 37 Subdivision (c)(7). Capital cases are excluded under subdivision (c)(7) because these cases have
 38 an automatic right of appeal to the California Supreme Court and trial court records are retained
 39 permanently under Government Code section 68152(c)(1), if the defendant is sentenced to death.

**ROTATION ASSIGNMENT
FOR LONGITUDINAL (100%) SAMPLE
Rule 6.755
As of January 1, 2000**

YEAR OF FILING	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
2000	Del Norte	Lake	Madera
2001	Glenn	Marin	Merced
2002	Inyo	Mendocino	Monterey
2003	Lassen	Napa	Orange
2004	Mariposa	Nevada	Riverside
2005	Modoc	Placer	San Bernardino
2006	Mono	Sacramento	San Diego
2007	Plumas	San Francisco	San Luis Obispo
2008	San Benito	San Joaquin	San Mateo
2009	Sierra	Shasta	Santa Barbara
2010	Siskiyou	Solano	Santa Clara
2011	Trinity	Sonoma	Santa Cruz
2012	Alpine	Sutter	Stanislaus
2013	Amador	Tehama	Tulare
2014	Calaveras	Yolo	Tuolumne
2015	Colusa	Yuba	Ventura
2016	Del Norte	Alameda	Fresno
2017	Glenn	Butte	Imperial
2018	Inyo	Contra Costa	Kern
2019	Lassen	El Dorado	Kings
2020	Mariposa	Humboldt	Los Angeles
2021	Lake	Madera	Modoc
2022	Marin	Merced	Mono

**ROTATION ASSIGNMENT
FOR LONGITUDINAL (100%) SAMPLE
Rule 6.755
As of January 1, 2000**

YEAR OF FILING	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
2023	Mendocino	Monterey	Plumas
2024	Napa	Orange	San Benito
2025	Nevada	Riverside	Sierra
2026	Placer	San Bernardino	Siskiyou
2027	Sacramento	San Diego	Trinity
2028	San Francisco	San Luis Obispo	Alpine
2029	San Joaquin	San Mateo	Amador
2030	Shasta	Santa Barbara	Calaveras
2031	Solano	Santa Clara	Colusa
2032	Sonoma	Santa Cruz	Del Norte
2033	Sutter	Stanislaus	Glenn
2034	Tehama	Tulare	Inyo
2035	Yolo	Tuolumne	Lassen
2036	Yuba	Ventura	Mariposa
2037	Alameda	Fresno	Modoc
2038	Butte	Imperial	Mono
2039	Contra Costa	Kern	Plumas
2040	El Dorado	Kings	San Benito
2041	Humboldt	Los Angeles	Sierra
2042	Madera	Siskiyou	Lake
2043	Merced	Trinity	Marin
2044	Monterey	Alpine	Mendocino
2045	Orange	Amador	Napa

**ROTATION ASSIGNMENT
FOR LONGITUDINAL (100%) SAMPLE
Rule 6.755
As of January 1, 2000**

YEAR OF FILING	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
2046	Riverside	Calaveras	Nevada
2047	San Bernardino	Colusa	Placer
2048	San Diego	Del Norte	Sacramento
2049	San Luis Obispo	Glenn	San Francisco
2050	San Mateo	Inyo	San Joaquin
2051	Santa Barbara	Lassen	Shasta
2052	Santa Clara	Mariposa	Solano
2053	Santa Cruz	Modoc	Sonoma
2054	Stanislaus	Mono	Sutter
2055	Tulare	Plumas	Tehama
2056	Tuolumne	San Benito	Yolo
2057	Ventura	Sierra	Yuba
2058	Fresno	Siskiyou	Alameda
2059	Imperial	Trinity	Butte
2060	Kern	Alpine	Contra Costa
2061	Kings	Amador	El Dorado
2062	Los Angeles	Calaveras	Humboldt
2063	Colusa	Lake	Madera
2064	Del Norte	Marin	Merced
2065	Glenn	Mendocino	Monterey