



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date	Action Requested
February 8, 2016	Please vote by February 11, 2016
To	Deadline
Executive Committee of the Court Executives Advisory Committee	February 11, 2016
From	Contact
Mr. Richard D. Feldstein Chair, Court Executives Advisory Committee	Ms. Tara Lundstrom 415-865-7650 phone tara.lundstrom@jud.ca.gov
Subject	
Record Sampling: Revised Invitation to Comment for Proposal to Amend Rule 10.855	Josely Yangco-Fronda 415-865-7626 phone josely.yangco-fronda@jud.ca.gov

Background

During the winter 2016 cycle, the Court Executives Advisory Committee (CEAC) recommended circulating for public comment a combined legislative and rules proposal that would amend Government Code section 68153 and rule 10.855 of the California Rules of Court. The proposal would amend rule 10.855 to substantially reduce the number of records that superior courts are required to keep as part of the record sampling program. It would also amend Government Code section 68153 to eliminate the requirement that superior courts must report destroyed court records to the Judicial Council.

During its February 2 meeting, CEAC's Records Management Subcommittee recommended introducing a substantive change to the rules proposal and circulating the revised proposal on a special rules cycle.¹ Instead of applying the rule amendments retroactively to only those courts

¹ Because the subcommittee is not seeking to change the legislative proposal, only the rules proposal would be recirculated.

that had not participated in the current sampling program (as was proposed in the first Invitation to Comment), the revised proposal would apply the proposed rule amendments retroactively to *all* courts. The revised proposal also includes a new rotation assignment that would implement the proposed rule amendments. Lastly, the revised proposal incorporates several of the specific recommendations for changes to the proposed rule amendments that were received when the proposal was first circulated.

The Records Management Subcommittee recommended circulating the revised proposal on a special rules cycle to preserve the July 1, 2016 effective date. As courts across the state are rolling out new case management systems and moving to paperless case environments, they must decide whether to scan all paper court records, destroy those paper records eligible for destruction, or retain all paper records. If the effective date of the new sampling program were delayed until January 1, 2017, many courts will scan court records unnecessarily at significant cost.

Recommendation

The Records Management Subcommittee recommends that CEAC's Executive Committee approve the circulation of the revised Invitation to Comment during a special rules cycle.

Attachment

1. Revised Invitation to Comment with attachments (the proposed rule amendments and rotation assignment)

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www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

[ItC prefix as assigned]-__

Title	Action Requested
Court Records: Records Sampling and Destruction	Review and submit comments by *, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 10.855	July 1, 2016
Proposed by	Contact
Court Executives Advisory Committee	Tara Lundstrom, 415-865-7650
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Executive Summary and Origin

The Court Executives Advisory Committee (CEAC) recommends amending the rule relating to the sampling of court records to substantially reduce the number of records that superior courts are required to keep. This proposal would significantly decrease court costs, while still ensuring that courts preserve a statistically significant sample of court records for future research purposes. It was previously circulated for public comment during the 2016 winter cycle. This Invitation to Comment specifically seeks comments on (1) CEAC's new recommendation that the proposed amendments apply retroactively to all courts and (2) a rotation assignment that would implement this proposal.

Background

Before the enactment of Assembly Bill 796 in 1989, all court records had to be microfilmed before they could be destroyed. To reduce the high annual costs of storage and microfilming, the County Clerks Association and the Association of Municipal Clerks cosponsored AB 796. As introduced, AB 796 would have allowed for the destruction of all court records after their retention periods expired. As finally enacted, AB 796 included former section 69503(e) of 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." AB 796 also directed the Judicial Council to develop a plan for implementing the sampling program

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

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 enacted Assembly Bill 1374, which repealed Government Code section 69503(e) and replaced it with section 68150(f), which has since been relettered as subdivision (i). This provision requires 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. AB 1374 also added Government Code section 68153, which requires that superior courts report any court records that they have destroyed to the Judicial Council.

Prior Circulation

This rules proposal was first circulated for public comment from December 11, 2015 to January 22, 2016, as part of the winter 2016 cycle. Five comments were submitted in response to the proposal. As addressed further below, this proposal incorporates several of the recommendations received in response to the proposal's first circulation. CEAC will address in full all comments received in response to the first and second circulation at the end of the second comment period.

After circulating the rules proposal, CEAC recommended revising the proposal to specify that the proposed amendments apply retroactively to all courts. Because this change is substantive in nature, CEAC recommended circulating this proposal for public comment.

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, and to preserve evidence of significant events and social trends.” As part of this program, this rule currently includes specific requirements for courts to retain comprehensive historical records and either a longitudinal or a combination of a systematic and a subjective sample of court records; the specifics of each of these requirements is discussed in more detail below. The rule also allows the Judicial Council to determine if an augmented sample is needed.

The committee has concluded that the goal of rule 10.855 can be achieved without retaining the voluminous number of court records that are currently kept by the courts. The purpose of this proposal is to substantially reduce the overall number of court records preserved, while still retaining a statistically significant sample of statewide records. The proposal seeks to strike a reasonable balance between storage costs and possible future research requirements.

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. Today, the rule continues to exclude these records from its scope. (See Cal. Rules of Court, rule 10.855(b).)

This rule proposal would amend rule 10.855 by eliminating the systematic, subjective, and augmented samples and by revising the longitudinal sample and comprehensive records 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, and (4) requiring courts to preserve sample court records only once every 19 years. The committee strongly endorses this proposal because it would alleviate the substantial burden imposed on the courts by the current sampling program.

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 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.

This proposal would retain but revise this requirement by keeping current items (1)–(3), eliminating items (4)–(6), and adding a new requirement to preserve records for cases in which the California Supreme Court has issued a written opinion.

Pre-1950 records and case indexes. The proposal would maintain the requirements in subdivisions (c)(1), (2), and (3) of rule 10.855 that courts preserve all records filed before 1911; if practicable, all records filed after 1910 and before 1950; and all case indexes. The committee’s view is that retaining these records is consistent with Government Code section 68150(i)’s requirement for the preservation of comprehensive historical court records. In addition, the preservation of these pre-1950 records does not impose a significant burden on the superior courts. The costs related to storing these records are relatively minimal.

Judgment books. The proposed amendments would eliminate the requirement in subdivision (c)(4) to preserve judgment books because it is redundant and unnecessary. All judgments for unlimited civil and felony cases²—whether they are kept in the case files or kept separately³—must already be preserved permanently under Government Code section 68152.⁴

Minute books. The proposed amendments would eliminate the requirement in subdivision (c)(5) to preserve minute books because it creates varying records retention practices among courts

² 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).)

³ Judgments must be entered into a judgment book. (Code 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.)

⁴ See Gov. Code, § 68152(a)(3), (c)(2), (g)(8).

statewide. Government Code section 68152 does not differentiate between minutes kept in the case files and those kept separately in minute books;⁵ both are eligible for destruction under the statute once the retention period for the underlying case type has expired.⁶ 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 proposed amendments would eliminate the requirement in subdivision (c)(6) to preserve registers of actions 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, lodged, or maintained in connection with the case.”⁷ Government Code section 68152(g)(16) provides that registers of action must be retained for the same retention period as records in the underlying case.⁸ Yet, as with minute books, rule 10.855(c)(6) requires only those courts that keep registers of action to preserve them permanently, resulting in varying records retention practices depending on whether the court creates and maintains registers of action or preserves all court records filed, lodged, or maintained in connection with the case in the case file.

Cases in which there is a Supreme Court opinion. Lastly, the proposed amendments would add to rule 10.855(c) the requirement that courts preserve the court records for cases in which the California Supreme Court has issued a written opinion. These records are currently labeled as “subjective sample” records. The proposed amendments would relocate this requirement from subdivision (f)(2) to subdivision (c), with the modification described below.

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.

⁵ 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.)

⁶ 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.

⁷ Gov. Code, § 69845.5.

⁸ 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 because rule 10.855 applies only to unlimited civil cases (Cal. Rules of Courts, rule 10.855(b)), which already must be retained for a period of 10 years. (Gov. Code, § 68152(a)(2).)

This proposal would retain this requirement but modify it to ensure that the sample is less burdensome on the courts while ensuring that the sample is representative and statistically significant. Similar to the current longitudinal sample, three courts would continue to be randomly selected in a given year, and each court would be required to preserve the longitudinal sample roughly every 19 years. However, the proposal would revise the longitudinal sample in two significant ways, described below.

Preservation of a partial sample. Courts would be required to maintain only a percentage of records for their selected year sufficient to ensure a statistically valid sample, 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 in proposed subdivision (f)(1) 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. Given the considerably greater number of cases filed with the court compared to other courts, the Superior Court of Los Angeles County would be required in proposed subdivision (f)(1) to retain only 10 percent of its records (i.e., every tenth case filed) for the year that it is selected.

Preservation of judgment books, minute books, and registers of action. As described further above, this proposal would eliminate 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, proposed subdivision (f)(2) would require courts to preserve all judgment books, minute books, and registers of action for their assigned longitudinal year sample.

Systematic sample records

Rule 10.855(f) 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. This proposal would amend rule 10.855 to eliminate this requirement in its entirety.

Eliminating the systematic sampling requirement would result in significant savings for superior courts 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.

Eliminating the subjective sample. With one exception (described below), this proposal would eliminate 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.” CEAC members also reasoned from their experience that the thickness of a case file was often a better indicator of the litigiousness of the parties than 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 this 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 cases in which there is a Supreme Court opinion (revised). This proposal would retain, but slightly modify, 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, this proposal would revise this requirement to provide for the preservation of records in “[a]ll noncapital cases in which the California Supreme Court has issued a written opinion.”⁹

The California Supreme Court grants review in hundreds of cases for which it never issues, and never intends to issue, a written opinion. 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 issues a written opinion; 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 excluded under the current rule 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 already be retained forever under Government Code section 68152(c)(1). This proposal would add an Advisory Committee Comment to explain why capital cases are not included in this requirement.

⁹ The previously circulated proposal referred to cases where the Supreme Court has issued a written *decision*. In response to the comment submitted by the Rules and Legislation Committee of the State Bar of California’s Litigation Section, the proposed amendment has been revised to clarify that this requirement applies only to if there is a written *opinion*.

In response to the comments submitted by the Superior Court of Los Angeles County when this rules proposal was first circulated, CEAC has modified the proposal to add to this Advisory Committee Comment the requirement, previously located in subdivision (f)(2), that the Judicial Council must make available to the superior courts a list of all noncapital cases in which the California Supreme Court issues a written opinion.

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 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 are CEAC members aware of any superior courts that have preserved an augmented sample under this subdivision. The proposal would amend the rule to eliminate the augmented sample because it has not been utilized.

Retroactive implementation (revised)

New subdivision (k) would be added to clarify the application of the rule amendments. This revised rules proposal provides that the rule amendments would apply retroactively to all courts. Because the destruction of court records is discretionary, all courts would be allowed, but not required, to apply the proposed amendments retroactively.

Although some superior courts regularly review their court records for destruction, others do not and have instead preserved all records by default. Applying the rule amendments retroactively would be relatively straightforward for those courts that have preserved all records by default. However, for those courts that have preserved court records under the current sampling program, it is foreseeable that they may have preserved only 10 percent of their court records (the current “systematic” sample) for the years that they might be assigned under the new sampling program to have preserved 25 percent of their court records (the proposed modified “longitudinal” sample). With the exception of the Superior Court of Los Angeles County, these courts would not be able to fully comply with the proposed rule amendments if they were to apply them retroactively. For this reason, CEAC first circulated a rules proposal that would apply the proposed rule amendments retroactively only to those courts that had not previously preserved their court records under the current rule.

After circulating the initial proposal for public comment, CEAC gave further consideration (1) to the practical difficulties that would result from applying the rule amendments retroactively only to some courts and (2) to the need to alleviate the financial and operational burden for all courts caused by the current rule. Based on discussions with the Judicial Council’s Office of Court Research, CEAC ascertained that a 10-percent sample would be sufficient for research purposes. Accordingly, CEAC decided to revise the rules proposal to apply the proposed amendments retroactively to all courts and to recirculate the revised proposal for public comment. The revised

proposal would also add an Advisory Committee Comment to explain how the rule amendments would apply retroactively to courts that preserved court records under the current rule.

Other proposed amendments to rule 10.855

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 amended subdivision (a)(2), effective January 1, 2013, to delete the reference to “paper exhibits.” (Stats. 2012, ch. 283.) This proposal would similarly eliminate 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 because both address the storage of comprehensive and sample court records in local archival facilities.

Rotation assignment (new)

In preparing the proposed rotation assignment, CEAC divided courts into clusters based on size to ensure a representative sample of small, medium, and large courts every year. It then randomly selected courts from each court cluster for the assigned year. Recognizing that it would be burdensome for those courts that had recently been assigned under the current rule to be selected again in the near future under this proposal, CEAC applied a rule moving those courts that had been assigned in the past 7 years to preserve the current longitudinal sample to the end of the 19-year rotational cycle. To ensure a representative sample for the retroactive application of the proposed amendments, the same assignment order was applied to prior years.

Alternatives Considered

CEAC considered three alternatives to the proposed amendments to rule 10.855. Because Government Code section 68150(i) requires the preservation of “comprehensive historical and sample court record[s],” none of the alternatives contemplated completely eliminating the list of comprehensive records identified in rule 10.855(c) or eliminating the requirement that superior courts retain a sample of their court records.

Alternative one: Maintain the longitudinal sample as is

The first alternative would have eliminated the systematic, subjective, and augmented samples, but maintained the current longitudinal sample without any modification. CEAC decided against recommending this alternative primarily because courts would still have to retain 100 percent of their records during their selected year when this is unnecessary to produce a statistically valid sample.

Alternative two: Maintain the current systematic sample

The second alternative would have maintained the systematic sample but eliminated the longitudinal, subjective, and augmented samples. Under this alternative, all superior courts would have been 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 will not be possible

under the rule amendments the committee is proposing because records from an individual court would be available only every 19 years.

Nonetheless, CEAC 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. It would require courts to preserve considerably more court records each year than they would under this proposal. Second, CEAC 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. This rule proposal would advance this purpose by preserving a statistically valid statewide sample of court records.

Alternative three: Modify the systematic sample

The third alternative considered by CEAC would have eliminated the longitudinal, subjective, and augmented samples and maintained 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.

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 rule amendments the committee is proposing. CEAC 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 yearly, resulting in significant operational costs.

Alternative four: Apply the rule amendments retroactively only to some courts (new)

The last alternative considered by CEAC would have applied the proposed rule amendments retroactively only to those superior courts that had not preserved court records under the current rule. After circulating a proposal that would have implemented this alternative, CEAC recommended circulating a revised proposal that would instead apply the proposed amendments retroactively to all courts. CEAC decided that full retroactive application was preferable because it would avoid complications that might arise in applying the rule amendments retroactively only to some courts and would help ease the financial and operational burden that the current rule imposes on courts.

Implementation Requirements, Costs, and Operational Impacts

Overall, the rule proposal would result in substantial cost savings for the courts because it would significantly reduce the number of court records that courts must preserve forever. It would positively affect operations by simplifying the destruction process: courts would no longer be required to set aside 10 percent of court records each year.

For any superior court that actively reviews its court records to determine whether they are eligible for destruction, implementation of the rule proposal would require establishing new records management procedures and processes for identifying which court records must be preserved as sample and historical court records under the amended rule. It would also require training court staff on the new procedures and processes.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would applying the proposed amendments retroactively to all courts be beneficial? Would it cause any issues or raise any concerns?

The advisory committee also seeks comments from *courts* on the following cost and implementation matters:

- Would the proposal provide cost savings? If so please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments

1. Proposed amendments to Cal. Rules of Court, rule 10.855, pages 11–16
2. Proposed rotation assignment, pages 17–20

Rule 10.855 of the California Rules of Court would be amended, effective July 1, 2016, to read:

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 noncapital cases in which the California Supreme Court has issued a
37 written opinion.
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 ~~100 percent~~
21 ~~of their court records for a calendar year (“longitudinal sample”)~~. the following:
22

- 23 (1) A random sample of 25 percent of their court records for a calendar year,
24 with the exception of the Superior Court of Los Angeles County, which must
25 preserve a random sample of 10 percent of its court records for a calendar
26 year.
27
28 (2) All judgment books, minute books, and registers of action if maintained
29 separately from the case files, for the calendar year. All other courts must
30 preserve a systematic sample of 10 percent or more of each year’s court
31 records and a 2 percent subjective sample of the court records scheduled to be
32 destroyed, as follows:
33
34 ~~(1) The “systematic sample” must be selected as follows after grouping all cases~~
35 ~~scheduled to be destroyed by filing year:~~
36
37 ~~(A) If the cases scheduled to be destroyed for a filing year number more~~
38 ~~than 1,000 cases, the sample must consist of all cases in which the last~~
39 ~~digit of the case number (0–9) coincides with the last digit of the year~~
40 ~~in which the case was filed.~~
41
42 ~~(B) If the cases scheduled to be destroyed for a filing year number from~~
43 ~~100 to 1,000, the sample must consist of cases selected by (1) dividing~~

1 the number of cases filed by 100, rounding fractions down to the next
2 lower number, and (2) counting the cases and preserving each case with
3 a position number in the files or other record that corresponds with the
4 number computed (for example, 670 cases \div 100 = 6.7; select every
5 sixth case).

6
7 (C) If fewer than 100 cases of a filing year are scheduled to be destroyed,
8 all of the cases must be preserved.

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

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

24
25 **(g) Augmented sample; designated advisory consultant**

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

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

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

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

42

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

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

10

11 ~~(i)~~ **(f) Storage**

12

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

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

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

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

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

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

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

20 ~~principles and practices of preservation.~~

21

22 ~~(j)~~ **(h) Access**

23

24 The court must ensure the following:

- 25
- 26 (1) The comprehensive, significant, and sample court records are made
- 27 reasonably available to all members of the public.
- 28
- 29 (2) Sealed and confidential records are made available to the public only as
- 30 provided by law.
- 31
- 32 (3) If the records are preserved in a medium other than paper, equipment is
- 33 provided to permit public viewing of the records.
- 34
- 35 (4) Reasonable provision is made for duplicating the records at cost.
- 36

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

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

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

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

15 **(j) Reporting requirement**

16
17 Each superior court must submit semiannually to the Judicial Council a *Report to*
18 *the Judicial Council: Superior Court Records Destroyed, Preserved, and*
19 *Transferred* (form REC-003), including the following information:
20

- 21 (1) A list by year of filing of the court records destroyed;
22
23 (2) A list by year of filing and location of the court records of the comprehensive
24 and sample court records preserved; and
25
26 (3) A list by year of filing and location of the court records transferred to entities
27 under rule 10.856.
28

29 **(k) Application**

30
31 The sampling program provided in this rule, as amended effective July 1, 2016,
32 applies retroactively to all superior courts.
33

34 **Advisory Committee Comment**

35
36 **Subdivision (c)(4).** Capital cases are excluded under subdivision (c)(4) because these cases have
37 an automatic right of appeal to the California Supreme Court and trial court records are retained
38 permanently under Government Code section 68152(c)(1) if the defendant is sentenced to death.
39 Each year, the Judicial Council will make available to the superior courts a list of all noncapital
40 cases in which the California Supreme Court has issued a written opinion.
41

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

4
5 Superior courts that destroyed court records under the prior sampling rule may have preserved
6 only 10 percent of their records (formerly known as the “systematic sample”) for the year that
7 they are now assigned to preserve the sample defined in subdivision (f). Except for the Superior
8 Court of Los Angeles County, these courts would not be able to meet the requirement in
9 subdivision (f)(1). So long as these courts continue preserving the 10-percent sample for their
10 assigned year, they will be deemed to have satisfied subdivision (f)(1).

DRAFT

SAMPLING PROGRAM ROTATION ASSIGNMENT**California Rules of Court, rule 10.855****As of July 1, 2016**

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
1912	Alpine	San Luis Obispo	Orange
1913	Amador	Placer	Kern
1914	Del Norte	Sutter	Monterey
1915	Trinity	Tuolumne	Santa Clara
1916	Colusa	Yuba	Ventura
1917	Plumas	Tehama	Alameda
1918	Butte	Siskiyou	Stanislaus
1919	Humboldt	Fresno	Tulare
1920	Mariposa	Yolo	Solano
1921	Inyo	Santa Cruz	Sonoma
1922	Glenn	Lake	San Diego
1923	Mono	Marin	Santa Barbara
1924	San Benito	Napa	San Bernardino
1925	Sierra	Mendocino	San Joaquin
1926	Imperial	Merced	San Mateo
1927	Kings	Madera	San Francisco
1928	Modoc	Shasta	Los Angeles
1929	Lassen	Contra Costa	Riverside
1930	El Dorado	Nevada	Sacramento
1931	Calaveras	San Luis Obispo	Orange
1932	Alpine	Placer	Kern
1933	Amador	Sutter	Monterey
1934	Del Norte	Tuolumne	Santa Clara
1935	Trinity	Yuba	Ventura
1936	Colusa	Tehama	Alameda
1937	Plumas	Siskiyou	Stanislaus
1938	Butte	Fresno	Tulare
1939	Humboldt	Yolo	Solano
1940	Mariposa	Santa Cruz	Sonoma
1941	Inyo	Lake	San Diego
1942	Glenn	Marin	Santa Barbara
1943	Mono	Napa	San Bernardino
1944	San Benito	Mendocino	San Joaquin

SAMPLING PROGRAM ROTATION ASSIGNMENT**California Rules of Court, rule 10.855****As of July 1, 2016**

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
1945	Sierra	Merced	San Mateo
1946	Imperial	Madera	San Francisco
1948	Modoc	Contra Costa	Riverside
1949	Lassen	Nevada	Sacramento
1950	El Dorado	San Luis Obispo	Orange
1951	Calaveras	Placer	Kern
1952	Alpine	Sutter	Monterey
1953	Amador	Tuolumne	Santa Clara
1954	Del Norte	Yuba	Ventura
1955	Trinity	Tehama	Alameda
1956	Colusa	Siskiyou	Stanislaus
1957	Plumas	Fresno	Tulare
1958	Butte	Yolo	Solano
1959	Humboldt	Santa Cruz	Sonoma
1960	Mariposa	Lake	San Diego
1961	Inyo	Marin	Santa Barbara
1962	Glenn	Napa	San Bernardino
1963	Mono	Mendocino	San Joaquin
1964	San Benito	Merced	San Mateo
1965	Sierra	Madera	San Francisco
1966	Imperial	Shasta	Los Angeles
1967	Kings	Contra Costa	Riverside
1968	Modoc	Nevada	Sacramento
1969	Lassen	San Luis Obispo	Orange
1970	El Dorado	Placer	Kern
1971	Calaveras	Sutter	Monterey
1972	Alpine	Tuolumne	Santa Clara
1973	Amador	Yuba	Ventura
1974	Del Norte	Tehama	Alameda
1975	Trinity	Siskiyou	Stanislaus
1976	Colusa	Fresno	Tulare
1977	Plumas	Yolo	Solano
1978	Butte	Santa Cruz	Sonoma
1979	Humboldt	Lake	San Diego
1980	Mariposa	Marin	Santa Barbara

SAMPLING PROGRAM ROTATION ASSIGNMENT**California Rules of Court, rule 10.855****As of July 1, 2016**

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
1981	Inyo	Napa	San Bernardino
1982	Glenn	Mendocino	San Joaquin
1983	Mono	Merced	San Mateo
1984	San Benito	Madera	San Francisco
1985	Sierra	Shasta	Los Angeles
1986	Imperial	Contra Costa	Riverside
1987	Kings	Nevada	Sacramento
1988	Modoc	San Luis Obispo	Orange
1989	Lassen	Placer	Kern
1990	El Dorado	Sutter	Monterey
1991	Calaveras	Tuolumne	Santa Clara
1992	Alpine	Yuba	Ventura
1993	Amador	Tehama	Alameda
1994	Del Norte	Siskiyou	Stanislaus
1995	Trinity	Fresno	Tulare
1996	Colusa	Yolo	Solano
1997	Plumas	Santa Cruz	Sonoma
1998	Butte	Lake	San Diego
1999	Humboldt	Marin	Santa Barbara
2000	Mariposa	Napa	San Bernardino
2001	Inyo	Mendocino	San Joaquin
2002	Glenn	Merced	San Mateo
2003	Mono	Madera	San Francisco
2004	San Benito	Shasta	Los Angeles
2005	Sierra	Contra Costa	Riverside
2006	Imperial	Nevada	Sacramento
2007	Kings	San Luis Obispo	Orange
2008	Modoc	Placer	Kern
2009	Lassen	Sutter	Monterey
2010	El Dorado	Tuolumne	Santa Clara
2011	Calaveras	Yuba	Ventura
2012	Alpine	Tehama	Alameda
2013	Amador	Siskiyou	Stanislaus
2014	Del Norte	Fresno	Tulare
2015	Trinity	Yolo	Solano
2016	Colusa	Santa Cruz	Sonoma
2017	Plumas	Lake	San Diego

SAMPLING PROGRAM ROTATION ASSIGNMENT**California Rules of Court, rule 10.855****As of July 1, 2016**

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
2018	Butte	Marin	Santa Barbara
2019	Humboldt	Napa	San Bernardino
2020	Mariposa	Mendocino	San Joaquin
2021	Inyo	Merced	San Mateo
2022	Glenn	Madera	San Francisco
2023	Mono	Shasta	Los Angeles
2026	Imperial	San Luis Obispo	Orange
2027	Kings	Placer	Kern
2028	Modoc	Sutter	Monterey
2029	Lassen	Tuolumne	Santa Clara
2030	El Dorado	Yuba	Ventura
2031	Calaveras	Tehama	Alameda
2032	Alpine	Siskiyou	Stanislaus
2033	Amador	Fresno	Tulare
2034	Del Norte	Yolo	Solano
2035	Trinity	Santa Cruz	Sonoma
2036	Colusa	Lake	San Diego
2037	Plumas	Marin	Santa Barbara
2038	Butte	Napa	San Bernardino
2039	Humboldt	Mendocino	San Joaquin
2040	Mariposa	Merced	San Mateo
2041	Inyo	Madera	San Francisco
2042	Glenn	Shasta	Los Angeles
2043	Mono	Contra Costa	Riverside
2044	San Benito	Nevada	Sacramento
2045	Sierra	San Luis Obispo	Orange
2046	Imperial	Placer	Kern
2047	Kings	Sutter	Monterey
2048	Modoc	Tuolumne	Santa Clara
2049	Lassen	Yuba	Ventura
2050	El Dorado	Tehama	Alameda
2051	Calaveras	Siskiyou	Stanislaus
2052	Alpine	Fresno	Tulare
2053	Amador	Yolo	Solano
2054	Del Norte	Santa Cruz	Sonoma
2055	Trinity	Lake	San Diego
2056	Colusa	Marin	Santa Barbara