



JUDICIAL COUNCIL
OF CALIFORNIA

COURT EXECUTIVES
ADVISORY COMMITTEE

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COURT EXECUTIVES ADVISORY COMMITTEE (CEAC)

RECORDS MANAGEMENT SUBCOMMITTEE

MINUTES OF OPEN MEETING

April 8, 2016
11:00 A.M. – 12:00 P.M.
Conference Call

Advisory Body Members Present: Richard Feldstein (Chair), Alan Carlson, Kevin Lane, Robert Oyung, Pat Patterson, and Kim Turner

Advisory Body Members Absent: Jake Chatters and Tricia Penrose

Judicial Staff Present: Chris Belloli, 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 11:00 a.m. and took roll call.

Approval of Minutes

The subcommittee reviewed and approved the public minutes of the March 7, 2016, subcommittee meeting.

Written Comments Received

No written comments were received.

DISCUSSION AND ACTION ITEMS (ITEMS 1-2)

Item 1

Records Sampling and Destruction: Amend Cal. Rules of Court, rule 10.855 (Action Required)

Mr. Richard Feldstein (Chair and CEO, Superior Court of Napa County) provided an overview regarding the subcommittee's circulation of the rule proposal for a second time on a special rule cycle. The second circulation included a revised rules proposal to apply the amendments retroactively to all courts and incorporate the specific recommendations made during the first circulation by the State Bar's Litigation Section and the Superior Court of Los Angeles County. It also included a new rotation assignment consisting of specific court assignments for the proposed new longitudinal sample.

Ms. Tara Lundstrom (Attorney, Legal Services, Judicial Council) led a discussion concerning the public comments received from the first and second circulation, and the proposed subcommittee responses. She also discussed the minor adjustment made on the new rotation assignment to retain Alameda, Fresno, and Del Norte as the courts assigned to the longitudinal sample in 2016

Motion:

Ms. Kim Turner (CEO, Ret.) made a motion to approve the proposed subcommittee responses to the public comments and revising the rotation assignment to retain the three courts currently assigned to the longitudinal sample in 2016. Mr. Alan Carlson (CEO, Superior Court of Orange County) seconded the motion.

The subcommittee unanimously approved the motion.

Item 2

TCRM Updates

Mr. Feldstein reported that updates to Chapter 11 and Appendix 2 of the *Trial Court Records Manual* (TCRM) to reflect amendments to rule 10.855 are currently being developed and will take effect January 1, 2017. He also stated that the Records Management page on the Judicial Resource Network is being updated to include sampling program FAQs and a lists of Supreme Court cases that resulted in opinions being issued.

Mr. Carlson asked for the status on the project concerning development of electronic signatures for parties and attorneys. Ms. Lundstrom reported that the legislative proposal to amend Code of Civil Procedure section 1010.6 was presented to Policy Coordination and Liaison Committee the day before to obtain that committee's approval to circulate it for public comment. If the Legislature enacts the proposal, it will take effect January 1, 2018. The subcommittee has sufficient time to develop the standards and guidelines for inclusion in the TCRM before the legislative proposal takes effect in 2018.

The subcommittee agreed to move forward with the development of guidelines and standards for (1) the contents of electronic registers of action and (2) the maintenance of electronic court records as data. The previously established ad hoc subgroups will work on these projects.

Mr. Robert Oyung (CIO, Superior Court of Santa Clara County) advised of a minor technical update to the TCRM section 6.1.3.2, File Format Best Practices. Staff will incorporate the changes in the next manual revision.

Mr. Oyung also raised issues related to remote electronic access by parties to certain court documents. Current rules of court restrict parties from viewing certain court documents online. With more litigants having the ability to access the Internet, not providing court documents electronically may become an issue for some courts. Courts upgrading their case management systems may also want to incorporate remote access into their upgrades. Mr. Oyung asked whether, in the absence of a rule to address this issue, the subcommittee consider adding this

topic to its current projects to develop guidelines or a mechanism to provide courts guidance with viewing/delivering requested court documents to parties electronically.

Ms. Lundstrom informed the subcommittee that the Information Technology Advisory Committee (ITAC) is in its initial phase in reviewing the public access rule and the remote electronic access issue. There are no rules governing remote access by parties. ITAC has considered developing the rules that will address the gap not just for parties but also for attorneys, justice partners, and certain identified groups. It is anticipated that a rule proposal will be circulated for public comment in Spring 2017. If it appears that the courts need the rule change earlier, the proposal might be moved to Winter 2016.

In the interim, Mr. Oyung will gather information on what the issues are and obtain feedback from the courts. He will then report back to the subcommittee at future meetings to decide whether the subcommittee would add this project to its annual workplan.

A D J O U R N M E N T

There being no further business, the meeting was adjourned at 11:48 a.m.

Approved by the advisory body on .



JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

| | |
|--|---|
| Date | Action Requested |
| September 2, 2016 | Review and make recommendations to CEAC |
| To | Deadline |
| Court Executives Advisory Committee Records Management Subcommittee Mr. Richard D. Feldstein, Chair | September 26, 2016 |
| From | Contact |
| Probate and Mental Health Advisory Committee Hon. John H. Sugiyama, Chair Mr. Douglas C. Miller, Lead Staff | Mr. Douglas C. Miller, Attorney 818-558-4178, douglas.c.miller@jud.ca.gov |
| Subject | |
| Legislative Proposal on Court Records Retention: Original Wills and Codicils | |

The Probate and Mental Health Advisory Committee (PMHAC) met on August 5, 2016, to review and consider comments received concerning the Court Executives Advisory Committee's proposal for changes in the law governing court storage of original wills and codicils.¹

The proposal circulated for comment called for the following:

1. Original wills deposited with courts and not offered for probate must be retained by the court indefinitely.

¹ A codicil is an amendment to a will that, when construed together with the will it amends, expresses the entire intent of the testator (*Estate of Benson* (1944) 62 CA2d 866). The term "will" includes codicils (Prob. Code, § 88). From this point on, this memorandum refers to wills only, but these references also fully apply to codicils.

2. Original wills deposited with a court that are offered for probate in a decedent's estate proceeding must be retained until the estate proceedings have become final.² When that occurs, the court may convert the original will to an electronic record and destroy the original. Before destruction of an original, however, the personal representative of the decedent's estate must first be given an opportunity to request return of the original in his or her petition for final discharge.

Comments Received and Alternatives Considered

This proposal was circulated for comment in the Spring of 2016. Seven comments were received.³ Virtually all commentators approved the concept of delivery of original wills offered for probate to estate personal representatives upon request preceded by the creation of electronic copies and followed by destruction of the original wills, although some court-connected commentators expressed concern that no costs be incurred by the court. On the other hand, two commentators objected to the proposal to require that original wills that are not offered for probate be retained permanently.

First, to address the concern that the return of original wills after final disposition of the probate proceedings might impose costs on the courts, PMHAC recommends adding the following provision at the end of Government Code section 68150(b)(2):

Original wills and codicils provided to the personal representative . . . shall be delivered to the personal representative or his or her attorney of record at the courthouse or other place where they are stored, or may be mailed or sent by a commercial delivery service to the personal representative or his or her attorney of record pursuant to arrangements made between the court and the personal representative or his or her attorney of record, without expense to the court, conditioned upon delivery of a receipt signed and dated by the personal representative or his or her attorney of record.

Second, PMHAC carefully considered the comments of Judge Julia Kelety and Executive Officer Michael Roddy of the Superior Court of San Diego County, who objected to the provision requiring retention indefinitely of original wills not offered for probate. The committee discussed an alternative to the proposal as circulated that would have permitted such wills to be copied electronically and the originals destroyed after ten years, and would also have authorized

² Offering a will for probate means proposing it for admission to probate as the decedent's will in an estate proceeding. For the purposes of legislation governing the storage of wills, offering a will for probate and failing has the same effect on the need to continue to store the original will as offering it for probate and succeeding. The estate proceeding finally determines that the will is either the last will of the decedent or it is not.

³ A chart summarizing the comments and PMHAC's proposed responses is attached.

the court's electronic copies of these wills to be offered for probate in proceedings commenced after destruction of the originals, similar to the way certified copies of original wills stored in other jurisdictions or in other countries may be offered for probate under Probate Code section 8202.⁴ In the end, however, the committee decided to continue to support its original recommendation for legislation clarifying that original wills not offered for probate in a probate proceeding should be retained indefinitely.

In reaching this conclusion, the committee balanced the benefits for the public and the courts in retaining original wills against the cost of such retention. The committee estimated that roughly 90 percent of wills deposited with the courts are offered for probate in a decedent's estate proceeding. Accordingly, the committee concluded that the percentage of court-stored wills that are not probated is likely to be relatively small and would not present an undue storage burden on the courts.

Finally, in reviewing the proposal and the comments, PMHAC concluded that there were some ways in which the proposed statutory language could be improved to be clearer and less ambiguous. In particular, the distinction between court-stored wills offered and not offered for probate, and the difference in their retention by courts as originals was not explicitly stated in the original proposal. Hence, the committee recommends modifying some portions of the circulated text to emphasize the differing storage requirements for deposited wills not offered for probate from those for deposited wills that have been offered for probate.

PMHAC's recommended changes concern two Government Code sections that were circulated for comment, section 26810 and section 68150. The changes to these two sections from the original version of the proposal that was circulated for comment are highlighted in red text.

Government Code section 26810 would be revised as follows:

Government Code section 26810

(a)–(d) * * *

(e) Upon making the reproduction authorized by this section, the clerk of the superior court may destroy the original document, except that the clerk shall not destroy an original will or codicil delivered to the court under the provisions of the Probate Code listed in Section (a)(2) that has not been offered for probate in a probate proceeding, or, if it has been offered for probate, not until there is a final disposition of the case as defined in Section 68151(c) in a probate proceeding. If requested by the personal representative under Section 12250(b) of the Probate Code, the clerk shall provide the originals to the personal representative or other person identified in the order of discharge, but only after

⁴ The revised legislation included a revision of section 8202 to explicitly provide for this procedure.

final disposition of the case and only if the clerk maintains the records in a form authorized by Section 68150(a).

Government Code section 68150 would be modified to provide clarifying language about the retention of original wills in different types of proceedings and also to include the new cost-saving delivery provision discussed above:

Government Code section 68150

(a) * * *

(b)(1) * * *

(2) This section shall not apply to original wills and codicils delivered to the clerk of the court under Section 8200 of the Probate Code that have not been offered for probate in a probate proceeding. Original wills and codicils shall be retained as provided in Section 26810. Original wills and codicils that have been offered for probate in a probate proceeding shall be retained until the final disposition of the case. If requested by the personal representative under Section 12250(b) of the Probate Code, the clerk shall provide the originals to the personal representative or other person identified in the order of discharge, but only after final disposition of the case and only if the clerk maintains the records in a form authorized by Section 68150(a). Original wills and codicils provided to the personal representative under this paragraph shall be delivered to the personal representative or his or her attorney of record at the courthouse or other place where they are stored, or may be mailed or sent by a commercial delivery service to the personal representative or his or her attorney of record pursuant to arrangements made between the court and the personal representative or his or her attorney of record, without expense to the court, conditioned upon delivery of a receipt signed and dated by the personal representative or his or her attorney of record.

The full text of the legislative proposal on the retention of original wills and codicils, with PMHAC's recommended revisions shown in red, is attached.

Attachments

1. PMHAC Revised Legislative Proposal, at pages 5–8
2. Comment chart, at pages 9–15

Legislative Proposal

Section 12250 of the Probate Code and sections 26810, 68150, 68151, and 68152 of the Government Code would be amended to read:

1 **Probate Code section 12250**

2 (a) When the personal representative has complied with the terms of the order for final
3 distribution and has filed the appropriate receipts or the court has excused the filing of a receipt
4 as provided in Section 11753, the court shall, on ex parte petition, make an order discharging the
5 personal representative from all liability incurred thereafter.

6 (b) The personal representative's ex parte petition for discharge may request the delivery of all
7 original wills and codicils in the possession of the court under Government Code section
8 68150(b)(2).

9 ~~(b)(c)~~ Nothing in this section precludes discharge of the personal representative for distribution
10 made without prior court order, so long as the terms of the order for final distribution are
11 satisfied.

13 **Government Code section 26810**

14 (a) The clerk of the superior court may cause the following documents to be photographed,
15 microphotographed, photocopied, or electronically imaged, ~~or otherwise reproduced on film~~ and
16 stored in that form:

17 (1) A document transferred to the clerk under Section 732 of the Probate Code.

18 (2) A will or codicil delivered to the clerk of the superior court under Section 732, 734, 8200, or
19 8203 of the Probate Code ~~if the clerk has held the will for at least 10 years;~~ however, the
20 originals may not be destroyed except as provided under subdivision (e).

21 (b) The photograph, microphotograph, photocopy, or electronic image shall be made in a manner
22 that meets the ~~minimum standards or guidelines recommended by the American National~~
23 ~~Standards Institute or the Association for Information and Image Management~~ standards and
24 guidelines adopted by the Judicial Council of California under Section 68150(c). ~~All these~~
25 ~~photographs, microphotographs, photocopies, and electronic images shall be indexed, and shall~~
26 ~~be stored in a manner and place that reasonably assures their preservation indefinitely against~~
27 ~~loss, theft, defacement, or destruction.~~

28 (c) Before proof of death of the maker of a document or will referred to in subdivision (a), the
29 photographs, microphotographs, photocopies, and electronic images shall be confidential, and
30 shall be made available only to the maker. After proof of death of the maker of the document or
31 will by a certified copy of the death certificate, the photographs, microphotographs, photocopies,
32 and electronic images shall be public records.

33 (d) Section 26809 does not apply to a will or other document referred to in subdivision (a), or to
34 the reproduction authorized by this section.

35 (e) Upon making the reproduction authorized by this section, the clerk of the superior court may
36 destroy the original document, except that the clerk shall not destroy an original will or codicil
37 delivered to the court under the provisions of the Probate Code listed in Section (a)(2) that has
38 not been offered for probate in a probate proceeding, or, if it has been offered for probate, not
39 until there is a final disposition of the case as defined in Section 68151(c). If requested by the
40 personal representative under Section 12250(b) of the Probate Code, the clerk shall provide the

1 originals to the personal representative or other person identified in the order of discharge, but
2 only after final disposition of the case and only if the clerk maintains the records in a form
3 authorized by Section 68150(a).
4

5 **Government Code section 68150**

6 (a) Trial court records may be created, maintained, and preserved in any form or forms of
7 communication or representation, including paper, optical, electronic, magnetic, micrographic, or
8 photographic media or other technology, if the form or forms of representation or
9 communication satisfy the rules adopted by the Judicial Council pursuant to subdivision (c), ~~once~~
10 ~~those rules have been adopted. Until those rules are adopted, the court may continue to create,~~
11 ~~maintain, and preserve records according to the minimum standards or guidelines for the~~
12 ~~preservation and reproduction of the medium adopted by the American National Standards~~
13 ~~Institute or the Association for Information and Image Management.~~

14 (b)(1) This section shall not apply to court reporters' transcripts or to specifications for electronic
15 recordings made as the official record of oral proceedings. These records shall be governed by
16 the California Rules of Court.

17 (2) This section shall not apply to original wills and codicils delivered to the clerk of the court
18 under Section 8200 of the Probate Code that have not been offered for probate in a probate
19 proceeding. Original wills and codicils shall be retained as provided in Section 26810. Original
20 wills and codicils that have been offered for probate in a probate proceeding shall be retained
21 until the final disposition of the case. If requested by the personal representative under Section
22 12250(b) of the Probate Code, the clerk shall provide the originals to the personal representative
23 or other person identified in the order of discharge, but only after final disposition of the case and
24 only if the clerk maintains the records in a form authorized by Section 68150(a). Original wills
25 and codicils provided to the personal representative under this paragraph shall be delivered to the
26 personal representative or his or her attorney of record at the courthouse or other place where
27 they are stored, or may be mailed or sent by a commercial delivery service to the personal
28 representative or his or her attorney of record pursuant to arrangements made between the court
29 and the personal representative or his or her attorney of record, without expense to the court,
30 conditioned upon delivery of a receipt signed and dated by the personal representative or his or
31 her attorney of record.

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

42 (d)-(l) * * *

43

1 **Government Code section 68151**

2 The following definitions apply to this chapter:

3 (a)–(b) * * *

4 (c) “Final disposition of the case” means that an acquittal, dismissal, or order of judgment has
5 been entered in the case or proceeding, the judgment has become final, and no postjudgment
6 motions or appeals are pending in the case or for the reviewing court upon the mailing of notice
7 of the issuance of the remittitur. In a criminal prosecution, the order of judgment shall mean
8 imposition of sentence, entry of an appealable order, including, but not limited to, an order
9 granting probation, commitment of a defendant for insanity, or commitment of a defendant as a
10 narcotics addict appealable under Section 1237 of the Penal Code, or forfeiture of bail without
11 issuance of a bench warrant or calendaring of other proceedings. In a probate decedent estate
12 proceeding, the order of judgment shall mean the order of final distribution concerning all
13 remaining testators named in the will.

14 (d) “Retain permanently” means that the court records shall be maintained permanently
15 according to the standards or guidelines established pursuant to subdivision (c) of Section 68150.

16
17 **Government Code section 68152**

18 The trial court clerk may destroy court records under Section 68153 after notice of destruction,
19 and if there is no request and order for transfer of the records, except the comprehensive
20 historical and sample superior court records preserved for research under the California Rules of
21 Court, when the following times have expired after the date of final disposition of the case in the
22 categories listed:

23 (a) Civil actions and proceedings, as follows:

24 (1)–(5) * * *

25 (6) Civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary
26 school violence, gun violence, and workplace violence cases: retain for the same period of time
27 as the duration of the restraining or other orders and any renewals thereof, then retain the
28 restraining or other orders permanently as a judgment; 60 days after expiration of the temporary
29 restraining or other temporary orders; retain judgments establishing paternity under Section 6323
30 of the Family Code permanently.

31 (7)–(10) * * *

32 (11) Probate:

33 (A) Decedent estates: retain permanently all orders, judgments, and decrees of the court, all
34 inventories and appraisals, and all wills and codicils of the decedent filed in the case, including
35 those not admitted to probate. If requested by the personal representative under Section 12250(b)
36 of the Probate Code, the clerk shall provide the original will or codicil to the personal
37 representative or other person identified in the order of discharge, but only after final disposition
38 of the case and only if the clerk maintains the records in a form authorized by Section 68150(a)
39 of the Government Code. All other records: retain for five years after final disposition of the
40 estate proceeding.

41 (B) Wills and codicils transferred or delivered to the court pursuant to Section 732, 734, 8200, or
42 8203 of the Probate Code in which there is no underlying case: retain the original records

- 1 permanently. For wills and codicils delivered to the clerk of the court under Section 8200 of the
- 2 Probate Code, retain the original documents as provided in Section 26810.
- 3 (C)–(H) * * *
- 4 (12)–(15) * * *

DRAFT

LEG16-02

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|---|--|
| 1. | California Judges Association, by Lexi Purich Howard, Legislative Director, Sacramento | NI | <p>Thank you for the opportunity to provide comments on behalf of the California Judges Association.</p> <p>We support the portions of the proposal that provide that at final discharge, a personal representative can request that the original documents be returned to him or her, and appreciate that the proposal makes clear that when an estate is still open, the will and codicils can't be destroyed. We suggest however that the portion of the proposal that provides that where there is no underlying case the court must retain the original indefinitely could pose logistical challenges to our courts related to the retention of voluminous physical documents, including deposited wills.</p> <p>We do note some concerns about destroying wills lodged with the court for which there was no case. We suggest that, before proceeding with this part of the proposal, there be a survey of courts to determine the number of wills that exist for which a case has never been opened. Our understanding of current statute is that wills may be destroyed after ten years; this may not be enough, and suggest further investigation about the extent of the problem and alternate solutions. Additionally, perhaps a revision to eliminate the requirement for will deposit in non-probate cases would be helpful.</p> | <p>The committee agrees with this concern. It has decided to retain the original proposal to retain the originals of wills that have not been offered for probate despite concerns expressed by some court commentators that this places too great a storage burden on the courts.</p> |

LEG16-02

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|--|---|
| | | | <p>Our comments here are intended to assist with this proposal at this stage and are not representative of a position on the proposal.</p> <p>Thank you for the opportunity to provide these comments; we welcome any questions and further discussion.</p> | |
| 2. | Keri Griffith Senior Court Manager Superior Court, County of Ventura, Oxnard | A | <p>With respect to delivery of wills returned after the final order of discharge, if requested, it would be my hope that the Ex Parte Petition and Order of Discharge not be modified in such a way as to put the burden or cost of actual delivery on the court, but on the personal representative. The comments in the proposal suggest each court would need to implement processes for delivery, so as much flexibility as possible is desired.</p> | <p>The proposal would require the personal representative to come to the courthouse or other facility where the will is stored to collect it or make an arrangement with the court, at no cost to the court, to have the original will delivered to the personal representative by U.S. Mail or private delivery service.</p> |
| 3. | Hon. Julia Keley, Judge of the Superior Court, County of San Diego San Diego | AM | <p>Parts of the proposal are fine. For example, under the proposal, at final discharge, a personal representative can request that the original documents be returned to him or her. That's a good idea. Further, the proposal makes clear that when an estate is still open, the Will and codicils can't be destroyed. That's a good plan too.</p> <p>However, the proposal provides that where there is no underlying case, the court must retain the original Will indefinitely. As in, forever. This</p> | <p>The advisory committee accepts Judge Keley's concerns, but is recommending retention of original wills and codicils deposited with courts</p> |

LEG16-02

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Position | Comment | Committee Response |
|-------------|----------|---|--|
| | | <p>poses big problems.</p> <p>In San Diego, we have been dealing with serious issues about storage of documents. As a result of budget cuts, we've been required to eliminate our off-site storage; and we don't have nearly enough room for storage in the courthouse. Moving to e-filing and document imaging has been a huge help to us, but we still struggle to deal with the volume of papers of various kinds, including deposited Wills.</p> <p>The idea of retaining all Wills indefinitely needs serious discussion. Why does this need to be done? And if it needs to be done, why is the court thrust into the role of permanent archivist?</p> <p>The fact of the matter is that our courts only have an interest in Wills that are offered for probate. There is no value to the court to hold on to old Wills for decedents who don't require a probate proceeding. Who, then, benefits from such a requirement?</p> <p>And beyond those fundamental issues, is the court going to be compensated for the necessary cataloging and storage? Does it make any sense to keep originals forever, when an electronic copy can be made and retained "forever"?</p> <p>If there is some historical value, couldn't the state or county set up such a repository? Perhaps</p> | <p>but never offered for probate. Estimates are that roughly 90 percent of wills and codicils deposited with courts are eventually offered for probate in a decedent's estate proceeding, most of them shortly after deposit following the testator's death. The committee supports the proposal to permit creation of electronic records of these wills and codicils, and destruction of the originals or delivery of them to requesting estate personal representatives when the estate proceeding involving them have become final. This disposition should reduce the storage difficulties of courts concerning original wills or codicils to a manageable extent.</p> |

LEG16-02**Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases**

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|-----------------|--|--|
| | | | <p>each county's public law library could be tasked with becoming its Will archivist, and compensated appropriately for the task.</p> <p>My understanding is that current statutes allow destruction of Wills after 10 years. That's much better than "indefinitely." But frankly, I'd like to completely revise the statutes to do away with the requirement of Will deposits in non-probate cases. It's a pointless anachronism and an expensive burden.</p> | |
| 4. | Orange County Bar Association, by Todd G. Friedman, President, Newport Beach | A | If Prob. Code § 12250 authorizes a personal representative through his ex parte petition for discharge to request return of original Will, the Judicial Council mandatory form, <i>Ex Parte Petition For Final Discharge and Order</i> (form DE 295) would have to be modified to provide for this request. | The advisory committee agrees with this statement, and will propose the necessary changes to the form in 2017 if this proposal results in legislation that accomplishes its purpose. |
| 5. | Superior Court of California, County of Orange, by Civil and Probate Operations Managers, Santa Ana | AM | Under [this proposed legislation], it is likely that some wills and codicils will never be destroyed. While a longer time criteria is probably necessary, it would be helpful to have some rules giving courts some flexibility in imaging and destroying very old documents. | See the response to the comments of the California Judges Association and Judge Julia Kelety |
| 6. | Superior Court of California, County of Orange, by Karen Lee, Deputy Manager, Records & Exhibits Management, Irvine | NI | 1. No expected cost savings to Orange County Superior Court as our local Policy Regarding Electronic Preservation of Trial Court Records & Destruction of Imaged Paper Documents requires the continued permanent retention of | No response necessary. |

LEG16-02

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|----|---|----------|--|---|
| | | | <p>all original wills and/or estate planning documents, including any addition to those (e.g. codicils, amendments, etc.), held in safekeeping or filed in the court record.</p> <p>2. We have not maintained a record of requests for original wills; however, we anticipate limited demand with medium impact to Operations with the need to develop procedures for delivery of original wills and imaging prior to delivery.</p> | |
| 7. | Superior Court of California, County of San Diego, by Michael M. Roddy, Court Executive Officer, San Diego | AM | <p>Before responding to the specific questions posed, here is some back-ground from the San Diego Superior Court on the retention of wills issue from the perspective of a large court.</p> <p>In San Diego, we began to realize that long-term storage of wills was going to be an issue, especially with a new building, with limited storage, on the horizon. In 2014, we took a close look at the Government Code and determined that there was a provision for destruction of the originals, after 10-years, provided a scanned electronic image was produced. That year we began scanning wills as they were deposited, with the intent to destroy them 10 years later. Our hope was to eventually circle back around to earlier deposited wills, and scan and destroy those as well. Now, two years into our will-imaging project, we have a better understanding of the sheer magnitude of wills being deposited</p> | See the committee’s response to the comment of Hon. Julia Kelety, Superior Court of San Diego County. |

LEG16-02

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| Commentator | Position | Comment | Committee Response |
|-------------|----------|---|---|
| | | <p>with our court. In 2014, we deposited approximately 2,100 wills. In 2015, we deposited approximately 2,900 wills. This year, as of today’s date, (05/13/2016), we have deposited over 1,100 wills. It is difficult to gauge how many of those will have a final disposition and would be eligible for destruction, or turnover to the personal representative, but knowing that it is the practice of most probate attorneys in San Diego, to submit their will with the Petition for Probate, rather than deposit them ahead of time, our guess is that less than 10% of these wills would be eligible for destruction. This proposal to retain wills permanently is not sustainable for large courts. In every other aspect, courts are looking to go digital and paperless. It is perplexing why wills are the one area in which the courts are contemplating taking a step backwards as technology continues to advance. The courts should seize this proposal as an opportunity to take a hard look at what courts actually gain from serving as a will repository. These documents, unless probated, should remain with the friends and family of the decedents, who actually find sentimentality or a sense of closure in them.</p> <p>Lastly, on the issue of returning the original will to the personal representative, after ex parte petition for final discharge is approved, it is our position that the will should ALWAYS, and</p> | <p>As noted above in the response to Judge Kelety, the committee estimates that roughly 90% of wills and codicils deposited with courts are offered for probate in a decedent’s estate proceeding. With the changes proposed in the law for retention of original wills and codicils offered for probate, indefinite storage of wills and codicils not offered for probate should not be an undue burden.</p> <p>The committee settled on final discharge to ensure that judgments of final distribution are final before the original wills or codicils offered for probate in the proceeding are destroyed or</p> |

LEG16-02

Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases

(amend Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152)

All comments are verbatim unless indicated by an asterisk (*).

| | Commentator | Position | Comment | Committee Response |
|--|-------------|----------|--|---|
| | | | <p>automatically, be returned to the personal representative upon disposition of the case rather than upon final discharge. We find that a large number of personal representatives fail to timely file their Ex Parte Petition for Final Discharge, and often times, neglect to file one entirely.</p> <p>We currently have a 30-day retention period for keeping scanned documents. This proposal does not mandate a longer holding period for wills, so under this new proposal, we will likely have scanned and destroyed the probated will well before an Ex Parte Petition for Final Discharge is filed. To comply with the new statutes, as proposed, courts would have to store these wills separately from their other scanned documents and in a manner in which they could be easily matched to an Ex Parte Petition for Final Discharge. Courts would also need to establish a reasonable time-frame in which the will could be destroyed without fear of a personal representative later requesting the will be returned.</p> | <p>delivered to the personal representative: that is, the time to appeal has passed or all appeals have been finally concluded. In addition, the petition for discharge presents the perfect opportunity for personal representatives to request original wills. The committee expects that the opportunity to recover original family-heirloom wills or codicils will cause more personal representatives to seek formal discharge. The court may well want to consider more aggressive efforts to ensure that personal representatives see their task through to final discharge.</p> <p>This proposal requires that original wills and codicils offered for probate must be retained until the proceedings are final, evidenced by the order of final discharge. If the law is followed, original wills offered for probate will not have been destroyed before the probate proceedings are final and the personal representative has been discharged.</p> |

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

LEG16-02

| | |
|--|---|
| Title | Action Requested |
| Court Records: Retention of Original Wills and Codicils and of Court Records in Gun Violence Cases | Review and submit comments by June 14, 2016 |
| Proposed Rules, Forms, Standards, or Statutes | Proposed Effective Date |
| Prob. Code, § 12250 and Gov. Code, §§ 26810, 68150, 68151, and 68152 | January 1, 2018 |
| Proposed by | Contact |
| Court Executives Advisory Committee | Tara Lundstrom, 415-865-7650 |
| Richard D. Feldstein, Chair | tara.lundstrom@jud.ca.gov |
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| | josely.yangco-fronda@jud.ca.gov |

Executive Summary and Origin

The Court Executives Advisory Committee recommends amending various statutes governing records retention in the Government Code. This legislative proposal would amend Government Code sections 26810, 68150, 68151, and 68152 to clarify that original wills and codicils must be retained until there is a final order of discharge in a probate proceeding. This proposal would also amend Probate Code section 12250 to provide a process whereby the personal representative may request delivery of the original wills and codicils in the ex parte petition for discharge. Lastly, this proposal would provide the retention period for court records in gun violence cases and would make technical amendments to the records retention statutes.

Background

In 2012, the Court Executives Advisory Committee led a collaborative effort with other advisory committees to modernize and improve the records retention statutes in the Government Code. This effort culminated in the enactment of Assembly Bill 1352 (Stats. 2013, ch. 274), which amended the Government Code to reduce the record retention periods for certain court records, to establish retention periods for new types of records that were not dealt with under existing law, and to eliminate ambiguities in the law relating to records retention.

The Proposal

This legislative proposal would amend the records retention statutes in the Government Code to clarify that original wills and codicils may not be scanned and destroyed until there is a final

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.

order of discharge in a probate proceeding. It would also provide a process in the Probate Code for the personal representative to request delivery of the original wills and codicils after final disposition. Lastly, it would provide the retention period for court records in gun violence cases and would make technical amendments.

This proposal was developed in consultation with the Probate and Mental Health Advisory Committee.

Retain all original wills and codicils until final order of distribution

The statutes governing records retention arguably could be interpreted as allowing courts to scan and destroy original wills and codicils, even if a probate proceeding is pending or has never been initiated. This proposal would amend Government Code sections 26810, 68150(b)(2), and 68152(a)(11) to clarify that courts must retain all original wills and codicils unless and until there is a final disposition of the case, which would occur upon final order of distribution that concerns all remaining testators named in the will.

Proposed amendments to Government Code section 26810. Government Code section 26810 addresses probate documents,¹ including original wills and codicils, that are delivered to the court when an attorney has terminated a deposit under Probate Code section 732 or when the custodian of a will has died under Probate Code section 8200.

This statute authorizes scanning and destroying original wills if more than 10 years have passed since they were delivered to the court under Probate Code section 8200. (See Gov. Code, § 26810(a)(2), (e).) It also might be interpreted as allowing courts to scan and destroy original wills and codicils immediately if they are delivered to the court under Probate Code section 732. (See Gov. Code, § 26810(a)(1), (e).) These wills and codicils could be scanned and destroyed regardless of whether the testator is deceased and whether the will has ever been probated.

This proposal would amend Government Code section 26810(a)(2) and (e) to clarify that all original wills and codicils that are delivered to the court—whether they are delivered under Probate Code sections 732, 734, 8200, or 8203—may not be destroyed unless and until there is a “final disposition of the case” as defined in Government Code section 68151(c).

Proposed amendments to Government Code section 68150. Government Code section 68150(a) authorizes trial courts to maintain “court records” solely in electronic form. The term “court record” is defined broadly as including “[a]ll filed papers and documents in the case folder, but if no case folder is created by the court, all filed papers and documents that would have been in the case folder if one had been created.” (Gov. Code, § 68151(a).) Applying this broad definition to Government Code section 68150(a) suggests that upon filing original wills and codicils with the

¹ Probate Code section 704 defines *document* as including, inter alia, (a) a signed original will, declaration of trust, trust amendment, or other document modifying a will or trust; (b) a signed original power of attorney; and (c) a signed original nomination of conservator.

court,² they qualify as “court records” and trial courts would arguably be authorized to scan and destroy the originals.

There is a limited exception to Government Code section 68150(a) in section 68150(b)(2) for original wills and codicils that are delivered to the court under Probate Code section 8200. These originals may not be immediately scanned and destroyed; however, they are to be retained as provided in Government Code section 26810, which currently states that they may be scanned and destroyed 10 years after delivery to the court, regardless of whether the testator is deceased and whether the will has ever been probated.

The proposal would amend Government Code section 68150(b)(2) to expand the exception to include all original wills and codicils. The proposed language would require courts to retain the originals—regardless of how they come into the court’s possession—unless and until there is a final disposition of the case as defined in Government Code section 68151(c). If an original will or codicil never becomes associated with a probate proceeding, the court would have to retain the original will or codicil permanently.

Proposed amendments to Government Code section 68151. The phrase “final disposition of the case” is defined in Government Code section 68151(c) to mean that “an acquittal, dismissal, or order of judgment has been entered in the case or proceeding, the judgment has become final, and no postjudgment motions or appeals are pending in the case or for the reviewing court upon the mailing of notice of the issuance of the remittitur.” To clarify its application to probate proceedings for decedent estates, the term “order of judgment” would be defined for these proceedings as the order of distribution. Applying this new definition to the other proposed amendments would require courts to retain the original wills and codicils until there is a final order of discharge concerning all remaining testators.

Proposed amendments to Government Code section 68152. This proposal would make amendments to Government Code section 68152(a)(11)(B), which provides the retention period for wills and codicils transferred or delivered to the court under Probate Code sections 732, 734, 8200, or 8203. It would clarify that if there is no underlying case, the court must retain the originals permanently.

Provide a process for requesting delivery of the original wills and codicils

This proposal would amend Probate Code section 12250 and Government Code sections 26810(e), 68150(b)(2), and 68152(a)(11)(A) to provide a process for the delivery of original wills and codicils upon request by the personal representative.

Probate Code section 12250(b) would be amended to recognize that the personal representative may request in the ex parte petition for discharge the delivery of all original wills and codicils in the possession of the court under Government Code section 68150(b)(2). Government Code

² See Prob. Code, § 8225 (“When court admits a will to probate, . . . the will shall be filed”).

section 68150(b)(2), in turn, would be amended to provide that, if such a request has been made, the clerk must deliver the original wills and codicils to the personal representative or to the person identified in the order of discharge, subject to certain conditions.

One condition would be that there must be a “final disposition in the case,” which would be defined for probate decedent estate proceedings as the final order of discharge concerning all remaining testators named in the will. Another condition would be that the clerk must maintain the record in a form authorized by Government Code section 68150(a), which provides that trial court records may be maintained “in any form or forms of communication or representation, including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology, if the form or forms of representation or communication satisfy the rules adopted by the Judicial Council.” The clerk could satisfy this condition, for example, by scanning and maintaining the wills and codicils as electronic records.

This process would allow for the personal representative to obtain the originals before they are scanned and destroyed by the clerk. At the same time, it would ensure that the originals are available to the court during the pendency of the probate proceeding and that they are maintained permanently as court records in an authorized form.

Parallel amendments would be introduced in Government Code sections 26810(e) and 68152(a)(11) to provide for consistency in the statutes addressing the retention of original wills and codicils.

Gun violence cases

This proposal would also amend Government Code section 68152(a)(6) to provide the retention period for court records in gun violence cases. The proposed amendment would require that the court records for gun violence cases be retained for the same period as those for civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary school violence, and workplace violence cases. Superior courts must retain these cases “for the same period of time as the duration of the restraining or other orders and any renewals thereof, then retain the restraining or other orders permanently as a judgment.” (Gov. Code, § 68152(a)(6).)

Technical amendments

This proposal would also amend Government Code section 68150(a) to recognize that the Judicial Council has already adopted a rule and implementing standards and guidelines for creating, maintaining, reproducing, or preserving court records, as required by subdivision (c).³ It would remove the references to national standards that applied while the rule and implementing standards and guidelines were in development.

³ The standards and guidelines for electronic court records are stated in the *Trial Court Records Manual*. (Cal. Rules of Court, rule 10.854; Judicial Council of Cal., *Trial Court Records Manual* (rev. Jan. 1, 2016), pp. 35–45.)

In addition, the proposed amendment would make Government Code section 26810(b) consistent with Government Code section 68150(c). It would remove the reference to the national standards. Instead, it would provide that photographs, micrographs, photocopies, or electronic images of wills and codicils must be made in a manner that satisfies the standards and guidelines adopted by the Judicial Council under Government Code section 68150(c). Because these standards and guidelines already address how to maintain court records, the additional instruction to indexing and storing the photographs, micrographs, photocopies, and electronic images would be removed. It would also remove an outdated reference to film reproductions in Government Code section 26810(a).

Alternatives Considered

Because judges and litigants need access to original wills and codicils during the pendency of probate proceedings, the committee did not consider alternatives.

Implementation Requirements, Costs, and Operational Impacts

To implement this proposal, the Judicial Council would need to make changes to the forms for ex parte order of discharge to allow personal representatives to request delivery of the original will and codicil. It would also need to make changes to the form order of discharge to indicate to whom the original wills and codicils should be delivered if a request is made by the personal representative in the ex parte petition. Making these changes would require expending staffing time and resources. Superior courts would have to implement processes for clerks to deliver original wills and codicils after the final order of discharge, if there has been a request. Once the new forms and processes are in place, the courts would be relieved of the burden of retaining original wills and codicils after a case involving decedent estates is final.

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?
- Should the references in Government Code section 68152(a)(11)(A) to “final disposition of the estate proceeding” be changed to “final disposition of the case” to be consistent with section 68152 generally?
- Should the references to “codicils” in Probate Code section 12250 and Government Code sections 26810, 68150, and 68152 be replaced with “documents modifying a will”?
- The reference to “all remaining testators named in the will” in the proposed amendment to Government Code section 68151(c) is intended to refer to joint wills of more than one person. Is this clear from the proposed language?
- Is the reference to Government Code section 68151(c) in the proposed amendment to Government Code section 26810(e) sufficiently clear to demonstrate that clerks would be required to preserve all original wills that are deposited with the court that have not been and may never be probated?

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 one year 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 and Links

1. Proposed amendments to Probate Code section 12250 and Government Code sections 26810 and 68150–68152, at pages 7–9

Section 1013b of the Code of Civil Procedure would be enacted and sections 664.5, 1010.6, and 1011 would be amended, effective January 1, 2018, to read:

1 **Probate Code section 12250**

2 (a) When the personal representative has complied with the terms of the order for final
3 distribution and has filed the appropriate receipts or the court has excused the filing of a receipt
4 as provided in Section 11753, the court shall, on ex parte petition, make an order discharging the
5 personal representative from all liability incurred thereafter.

6 (b) The personal representative's ex parte petition for discharge may request the delivery of all
7 original wills and codicils in the possession of the court under Government Code section
8 68150(b)(2).

9 ~~(b)(c)~~ Nothing in this section precludes discharge of the personal representative for distribution
10 made without prior court order, so long as the terms of the order for final distribution are
11 satisfied.

12
13 **Government Code section 26810**

14 (a) The clerk of the superior court may cause the following documents to be photographed,
15 microphotographed, photocopied, or electronically imaged, ~~or otherwise reproduced on film~~ and
16 stored in that form:

17 (1) A document transferred to the clerk under Section 732 of the Probate Code.

18 (2) A will or codicil delivered to the clerk of the superior court under Section 732, 734, 8200, or
19 8203 of the Probate Code ~~if the clerk has held the will for at least 10 years; however, the~~
20 originals may not be destroyed except as provided under subdivision (e).

21 (b) The photograph, microphotograph, photocopy, or electronic image shall be made in a manner
22 that meets the ~~minimum standards or guidelines recommended by the American National~~
23 ~~Standards Institute or the Association for Information and Image Management~~ standards and
24 guidelines adopted by the Judicial Council of California under Section 68150(c). ~~All these~~
25 ~~photographs, microphotographs, photocopies, and electronic images shall be indexed, and shall~~
26 ~~be stored in a manner and place that reasonably assures their preservation indefinitely against~~
27 ~~loss, theft, defacement, or destruction.~~

28 (c) Before proof of death of the maker of a document or will referred to in subdivision (a), the
29 photographs, microphotographs, photocopies, and electronic images shall be confidential, and
30 shall be made available only to the maker. After proof of death of the maker of the document or
31 will by a certified copy of the death certificate, the photographs, microphotographs, photocopies,
32 and electronic images shall be public records.

33 (d) Section 26809 does not apply to a will or other document referred to in subdivision (a), or to
34 the reproduction authorized by this section.

35 (e) Upon making the reproduction authorized by this section, the clerk of the superior court may
36 destroy the original document, except that the clerk shall not destroy an original will or codicil
37 until there is a final disposition of the case as defined in Section 68151(c) in a probate
38 proceeding. If requested by the personal representative under Section 12250(b) of the Probate
39 Code, the clerk shall provide the originals to the personal representative or other person
40 identified in the order of discharge, but only after final disposition of the case and only if the
41 clerk maintains the records in a form authorized by Section 68150(a).

1 **Government Code section 68150**

2 (a) Trial court records may be created, maintained, and preserved in any form or forms of
3 communication or representation, including paper, optical, electronic, magnetic, micrographic, or
4 photographic media or other technology, if the form or forms of representation or
5 communication satisfy the rules adopted by the Judicial Council pursuant to subdivision (c), ~~once~~
6 ~~those rules have been adopted. Until those rules are adopted, the court may continue to create,~~
7 ~~maintain, and preserve records according to the minimum standards or guidelines for the~~
8 ~~preservation and reproduction of the medium adopted by the American National Standards~~
9 ~~Institute or the Association for Information and Image Management.~~

10 (b)(1) This section shall not apply to court reporters' transcripts or to specifications for electronic
11 recordings made as the official record of oral proceedings. These records shall be governed by
12 the California Rules of Court.

13 (2) This section shall not apply to original wills and codicils ~~delivered to the clerk of the court~~
14 ~~under Section 8200 of the Probate Code. Original wills and codicils shall be retained as provided~~
15 ~~in Section 26810. The originals shall be retained until the final disposition of the case. If~~
16 ~~requested by the personal representative under Section 12250(b) of the Probate Code, the clerk~~
17 ~~shall provide the originals to the personal representative or other person identified in the order of~~
18 ~~discharge, but only after final disposition of the case and only if the clerk maintains the records~~
19 ~~in a form authorized by Section 68150(a).~~

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

30 (d)-(l) * * *

31
32 **Government Code section 68151**

33 The following definitions apply to this chapter:

34 (a)-(b) * * *

35 (c) "Final disposition of the case" means that an acquittal, dismissal, or order of judgment has
36 been entered in the case or proceeding, the judgment has become final, and no postjudgment
37 motions or appeals are pending in the case or for the reviewing court upon the mailing of notice
38 of the issuance of the remittitur. In a criminal prosecution, the order of judgment shall mean
39 imposition of sentence, entry of an appealable order, including, but not limited to, an order
40 granting probation, commitment of a defendant for insanity, or commitment of a defendant as a
41 narcotics addict appealable under Section 1237 of the Penal Code, or forfeiture of bail without
42 issuance of a bench warrant or calendaring of other proceedings. In a probate decedent estate

1 proceeding, the order of judgment shall mean the order of final distribution concerning all
2 remaining testators named in the will.

3 (d) “Retain permanently” means that the court records shall be maintained permanently
4 according to the standards or guidelines established pursuant to subdivision (c) of Section 68150.
5

6 **Government Code section 68152**

7 The trial court clerk may destroy court records under Section 68153 after notice of destruction,
8 and if there is no request and order for transfer of the records, except the comprehensive
9 historical and sample superior court records preserved for research under the California Rules of
10 Court, when the following times have expired after the date of final disposition of the case in the
11 categories listed:

12 (a) Civil actions and proceedings, as follows:

13 (1)–(5) * * *

14 (6) Civil harassment, domestic violence, elder and dependent adult abuse, private postsecondary
15 school violence, gun violence, and workplace violence cases: retain for the same period of time
16 as the duration of the restraining or other orders and any renewals thereof, then retain the
17 restraining or other orders permanently as a judgment; 60 days after expiration of the temporary
18 restraining or other temporary orders; retain judgments establishing paternity under Section 6323
19 of the Family Code permanently.

20 (7)–(10) * * *

21 (11) Probate:

22 (A) Decedent estates: retain permanently all orders, judgments, and decrees of the court, all
23 inventories and appraisals, and all wills and codicils of the decedent filed in the case, including
24 those not admitted to probate. If requested by the personal representative under Section 12250(b)
25 of the Probate Code, the clerk shall provide the original will or codicil to the personal
26 representative or other person identified in the order of discharge, but only after final disposition
27 of the case and only if the clerk maintains the records in a form authorized by Section 68150(a)
28 of the Government Code. All other records: retain for five years after final disposition of the
29 estate proceeding.

30 (B) Wills and codicils transferred or delivered to the court pursuant to Section 732, 734, 8200, or
31 8203 of the Probate Code in which there is no underlying case: retain the original records
32 permanently. ~~For wills and codicils delivered to the clerk of the court under Section 8200 of the~~
33 ~~Probate Code, retain the original documents as provided in Section 26810.~~

34 (C)–(H) * * *

35 (12)–(15) * * *



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on December 16, 2016:

| | |
|--|--|
| Title | Agenda Item Type |
| Court Records: Records Destruction Reporting Requirement | Action Required |
| Rules, Forms, Standards, or Statutes Affected | Effective Date |
| Sponsor Legislation to Amend Government Code section 68153 | January 1, 2018 |
| Recommended by | Date of Report |
| Policy Coordination and Liaison Committee | September 21, 2016 |
| Hon. Kenneth K. So, Chair | Contact |
| Court Executives Advisory Committee | Patrick O'Donnell, 415-865-7665 |
| Jake Chatters, Chair | patrickodonnell@jud.ca.gov |
| | Josely Yangco-Frona, 415-865-7626 |
| | josely.yangco-fronda@jud.ca.gov |

Executive Summary

The Policy Coordination and Liaison Committee and the Court Executives Advisory Committee recommend that the Judicial Council sponsor legislation to amend Government Code section 68153, the statute governing the destruction of court records, to eliminate the requirement that superior courts must report destroyed court records to the Judicial Council. Current law requires that superior courts must provide lists of the court records destroyed within the jurisdiction of the superior court to the Judicial Council in accordance with the California Rules of Court. By eliminating the requirement for courts to provide the lists to the council, the legislative proposal would reduce the courts' workload and simplify the reporting process.

Recommendation

The Policy Coordination and Liaison Committee and the Court Executives Advisory Committee recommend that the Judicial Council sponsor legislation to eliminate the statutory reporting requirement in Government Code section 68153.

The text of the amendments to the statute are attached at page 4.

Previous Council Action

In 1994, the Legislature enacted Assembly Bill 1374, which added Government Code section 68153, which requires that superior courts report any court records that they have destroyed to the Judicial Council. In response, the Judicial Council subsequently adopted rule 10.855 (*I*) and Judicial Council form REC-003 to implement the reporting requirement.

Rationale for Recommendation

Under Government Code section 68153, superior courts must provide a “list of the court records destroyed within the jurisdiction of the superior court . . . to the Judicial Council in accordance with the California Rules of Court.” In turn, rule 10.855(*I*) requires each superior court to submit semiannually to the Judicial Council form, *Report to Judicial Council: Superior Court Records, Destroyed, Preserved, and Transferred* (form REC-003), 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 Court Executives Advisory Committee (CEAC) has concluded that the reporting requirement in Government Code section 68153 is unnecessary and overly burdensome on courts. It recommends that the Judicial Council sponsor legislation to eliminate this requirement.

Government Code section 68153 would be amended to eliminate the reporting requirement.¹ Complying with this requirement is time-consuming and burdensome for superior courts, and Judicial Council staff has received no requests for the lists of forms. Moreover, when superior courts destroy court records under Government Code section 68153, they are required to make a notation of the date of destruction on the index of cases or on a separate destruction index. This statutory requirement ensures that superior courts establish appropriate mechanisms for tracking whether a court record has been destroyed. Unaware of any reason for additionally tracking the destruction of these records on a statewide level, CEAC reasons that tracking is best left at the local level.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for public comment from December 11, 2015, to January 22, 2016, during the winter 2016 cycle. There were no comments received in response to the circulation of the legislative proposal.

¹ If the Legislature enacts this amendment to Government Code section 68153, CEAC intends to recommend eliminating subdivision (*I*) of rule 10.855.

Implementation Requirements, Costs, and Operational Impacts

The legislative proposal would result in staff time savings for the court because it would eliminate this time-consuming and burdensome requirement: courts would no longer be required to report destroyed court records to the Judicial Council.

Attachments and Links

1. Government Code section 68153, at page 4

DRAFT

Government Code section 68153 would be amended, effective January 1, 2018, to read:

1 **Government Code section 68153**

2

3 Upon order of the presiding judge of the court, court records open to public inspection
4 and not ordered transferred under the procedures in the California Rules of Court,
5 confidential records, and sealed records that are ready for destruction under Section
6 68152 may be destroyed. Destruction shall be by shredding, burial, burning, erasure,
7 obliteration, recycling, or other method approved by the court, except confidential and
8 sealed records, which shall not be buried or recycled unless the text of the records is first
9 obliterated.

10

11 Notation of the date of destruction shall be made on the index of cases or on a separate
12 destruction index. ~~A list of the court records destroyed within the jurisdiction of the~~
13 ~~superior court shall be provided to the Judicial Council in accordance with the California~~
14 ~~Rules of Court.~~