



JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: June 24, 2016

Title	Agenda Item Type
Court Records: Records Sampling and Destruction	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 10.855; and approve rotation assignment	July 1, 2016
Recommended by	Date of Report
Court Executives Advisory Committee	June 10, 2016
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Executive Summary

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. The amendments would significantly decrease court costs, while still ensuring that courts preserve a statistically significant sample of court records for future research purposes. To implement these amendments, CEAC also recommends a new rotation assignment that lists when each court must retain sample court records.

Recommendation

CEAC recommends that the Judicial Council:

1. Amend rule 10.855 of the California Rules of Court, effective July 1, 2016, to eliminate the systematic, subjective, and augmented samples, and to revise the longitudinal sample and comprehensive records requirements;
2. Approve the new rotation assignment.

The text of the amended rule is attached at pages 11–16. The new rotation assignment is at pages 17–20.

Previous Council Action

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 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 AB 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.

Rationale for Recommendation

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 has included 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 are discussed in more detail below. The rule has also allowed the Judicial Council to determine if an augmented sample is needed.

CEAC 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 rule amendments are intended to substantially reduce the overall number of court records preserved, while still retaining a statistically significant sample of statewide records. They seek to strike a reasonable balance between storage costs and possible future research requirements.

¹ For example, the Judicial Council amended the rule 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).)

Rule 10.855 would be amended to eliminate the systematic, subjective, and augmented samples, and to revise the longitudinal sample and comprehensive records requirements. The benefits of this proposal include (1) reducing the storage needs of superior courts to retain sample court records 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 these amendments because they would alleviate the substantial burden imposed on the courts by the current sampling program. To implement these amendments, CEAC developed a chart listing the rotation assignment of each court.

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.

These rule amendments would 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 amendments 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 the requirement in Government Code section 68150(i) for 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 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

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).

Minute books. The amendments would eliminate the requirement in subdivision (c)(5) to preserve minute books because it creates varying records retention practices among courts statewide. Government Code section 68152 does not differentiate between minutes kept in the case files and those kept separately in minute books;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 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 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. As discussed further below, the Judicial Council would be responsible for making available to the superior courts a list of all noncapital cases in which the California Supreme Court issues a written opinion. These records are currently labeled as “subjective sample” records. The amendments would relocate this requirement from subdivision (f)(2) to subdivision (c), with the modification described below.

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).)

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.

These rule amendments would modify this requirement to ensure that the sample is less burdensome on the courts while remaining 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 longitudinal sample would be amended 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.⁹

Preservation of judgment books, minute books, and registers of action. As described further above, these amendments 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

Current 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. Rule 10.855 would be amended to eliminate this requirement in its entirety.

⁹ With the assistance of the Judicial Council’s Office of Court Research, CEAC has determined that retaining 10 percent of court records would provide a sufficient sample for research purposes. CEAC decided to require that courts other than the Superior Court of Los Angeles County retain 25 percent of their records to provide for a more robust sample.

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

Current 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.

Elimination of the subjective sample. With one exception (described below), the rule amendments 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; for example, 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. These amendments would 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."

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 these amendments, superior courts would preserve the records of only those cases in which the court issues a written opinion; they would not be required to preserve records in the "grant and hold" cases.

In addition, the amendments exclude 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). The amendments would add an Advisory Committee Comment to explain why capital cases are not included in this requirement.

In response to the comments submitted by the Superior Court of Los Angeles County when this rules proposal was first circulated, CEAC modified the proposal by adding 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 rule would be amended to eliminate the augmented sample because it has not been utilized.

Retroactive implementation

A new subdivision (k) would be added to clarify the application of the rule amendments. The rule amendments would be applicable retroactively to all courts. Because the destruction of court records is discretionary, all courts would be allowed—but not required—to apply the 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 have applied 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 recommend that the amendments apply retroactively to all courts. An Advisory Committee Comment would be added to explain how the rule amendments would apply retroactively to courts that preserved court records under the prior 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.) These amendments would similarly eliminate the reference to "paper exhibits" from the definition of "court record" in rule 10.855(e)(3).

Lastly, these amendments 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

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 seven 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.

CEAC made one minor adjustment to the rotation assignment after circulating the second rules proposal. The circulated rotation assignment removed the three courts—Alameda, Fresno, and Del Norte—that are currently assigned to preserve the longitudinal sample for the 2016 year, and replace them with Sonoma, Santa Cruz, and Colusa.

After further reflection, CEAC concluded that the better approach would be to leave in the rotation assignment the three courts that are currently assigned to preserve the 2016 longitudinal sample. This would ease implementation of the rule amendments by the July 1, 2016, effective date. The courts that are currently assigned to the 2016 year are already preserving 100 percent of their cases as part of the longitudinal sample. On or after July 1, 2016, these courts would have the option of either continuing to preserve 100 percent of their cases or reducing the number of cases preserved to 25 percent. Compared with the alternative—requiring three courts that may be preserving only the 10-percent systematic sample in 2016 to start preserving 25 percent of their cases by July 1, 2016—either option would be relatively less disruptive for these courts. Moreover, the 2016 longitudinal sample would still be representative in that it would

consist of a small (Del Norte), medium (Fresno), and large court (Alameda). To implement this change, minor adjustments were made to the rotation assignment.

Comments, Alternatives Considered, and Policy Implications

This proposal was circulated for comment twice, first from December 11, 2015, to January 22, 2016, during the winter 2016 cycle, and then from February 26 to March 26, 2016, on a special cycle.

Five organizations provided comment during the first comment cycle: three agreed with the proposal, one agreed if modified, and one did not indicate its position. As discussed above, CEAC incorporated the specific recommendations of the State Bar’s Litigation Section and the Superior Court of Los Angeles County into the rules proposal before it was circulated again. Three organizations and one individual provided comments during the second comment cycle. Two agreed with the proposal, and two did not indicate their position. A chart with the full text of the comments received from both cycles and the committee’s responses is attached at pages 21–43.

Alternatives

CEAC considered four 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. 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 initially circulating a proposal that would have implemented this alternative, CEAC circulated 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 prior rule imposed on courts.

Implementation Requirements, Costs, and Operational Impacts

Overall, these amendments would result in substantial cost savings for the courts because they would significantly reduce the number of court records that courts must preserve forever. They 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.

Attachments and Links

1. Cal. Rules of Court, rule 10.855, at pages 11–16
2. New rotation assignment, at pages 17–20
3. Chart of comments, at pages 21–43

Rule 10.855 of the California Rules of Court is 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)~~ 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).

ROTATION ASSIGNMENT FOR LONGITUDINAL SAMPLE
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	Placer	Kern
1913	Amador	Sutter	Monterey
1914	Del Norte	Tuolumne	Santa Clara
1915	Trinity	Yuba	Ventura
1916	Colusa	Tehama	Alameda
1917	Plumas	Siskiyou	Stanislaus
1918	Butte	Fresno	Tulare
1919	Humboldt	Yolo	Solano
1920	Mariposa	Santa Cruz	Sonoma
1921	Inyo	Lake	San Diego
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
1945	Sierra	Merced	San Mateo
1946	Imperial	Madera	San Francisco
1947	Kings	Shasta	Los Angeles
1948	Modoc	Contra Costa	Riverside

ROTATION ASSIGNMENT FOR LONGITUDINAL SAMPLE
California Rules of Court, rule 10.855
As of July 1, 2016

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
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
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

ROTATION ASSIGNMENT FOR LONGITUDINAL SAMPLE
California Rules of Court, rule 10.855
As of July 1, 2016

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
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	Sonoma
2013	Amador	Siskiyou	Stanislaus
2014	Colusa	Santa Cruz	Tulare
2015	Trinity	Yolo	Solano
2016	Del Norte	Fresno	Alameda
2017	Plumas	Lake	San Diego
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
2024	San Benito	Contra Costa	Riverside
2025	Sierra	Nevada	Sacramento
2026	Imperial	San Luis Obispo	Orange

ROTATION ASSIGNMENT FOR LONGITUDINAL SAMPLE

California Rules of Court, rule 10.855

As of July 1, 2016

Year of Filing	CALIFORNIA SUPERIOR COURTS		
	Group 1	Group 2	Group 3
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

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

First Comment Cycle				
	Commentator	Position	Comment	Response
1.	State Bar of California, Litigation Section by Reuben A. Ginsburg, Chair, Rules and Legislation Committee	NI	<p>We see no indication in the invitation to comment that the advisory committee has consulted historians and other researchers to determine whether the proposed limited sampling would be adequate for purposes of future historical research. We believe that such consultation is essential. We therefore urge the advisory committee to postpone presenting this proposal until after it has consulted a qualified historian. We suggest that a later invitation to comment be issued containing the results of that consultation and specifically inviting comment from historians and archivists.</p> <p>We suggest that the language “[a]ll noncapital cases in which the California Supreme Court has issued a written decision” in proposed rule 10.855(c)(4) be modified to clarify whether it encompasses only those cases in which the Supreme Court has issued a written opinion or also those cases in which the Supreme Court has issued a written order constituting a decision.</p>	<p>CEAC appreciates this input from the State Bar’s Litigation Section. During the second public comment cycle, CEAC distributed the revised ITC for comment to those archivists and historians who are notified of the destruction of court records. CEAC did not receive any comments from these individuals and entities.</p> <p>This recommendation was incorporated into the revised ITC that was circulated during the second public comment cycle. The rule amendments now refer to “[a]ll noncapital cases in which the California Supreme Court has issued a written <i>opinion</i>.” (Italics added.)</p>
2.	Superior Court of Los Angeles County	AM	<p>General Comments</p> <ul style="list-style-type: none"> Page 10, lines 36-37: As to the addition of (c)(4) <i>All noncapital cases in which the California Supreme Court has issued a written decision...</i>, will the Judicial Council continue to provide this information to courts? Currently, the CRC states that the Judicial Council will maintain the list. 	<p>This recommendation was incorporated into the revised ITC that was circulated during the second public comment cycle. An Advisory Committee Comment has been added to instruct the Judicial Council to make available to the superior courts a list of all noncapital cases in which the California Supreme Court has issued a written opinion.</p>

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

First Comment Cycle				
Commentator	Position	Comment	Response	
		<ul style="list-style-type: none"> Page 11, lines 18-26: Suggest adding a (1) and (2) in section (f) Sampling Technique to distinguish two different types of inventory to retain. For example, three courts in their rotation have to retain the 25% sample (10% for LASC); however, only those courts in rotation that maintain judgment books, minute books, and registers of action separately from the case files are required to retain these permanently for the entire respective calendar year. It may assist courts in knowing there are two parts to this section <u>and</u> that the latter requirement is 100% of their books and registers of action for the entire year, not just 25%. Page 14, lines 11-23: Should this be lined out as it was suggested to remove this requirement? Or, can it not be removed effective July 1, 2016 until the Government Code section 68153 is modified in January 2017 to remove the reporting requirement to Judicial Council? <p><u>Responses to Request for Specific Comments</u> Does the proposal appropriately address the stated purpose?</p> <p><i>Yes, the proposed revisions to the CRC are an appropriate balance to cost- and time-savings for courts while continuing to provide sufficient historical and statistical values.</i></p>	<p>This recommendation was incorporated into the revised ITC that was circulated during the second public comment cycle. As recommended by the court, subdivision (f) of rule 10.855 now has two paragraphs: paragraph (1) addresses sampling and paragraph (2) addresses judgment books, minute books, and registers of action maintained separately from case files.</p>	<p>This requirement cannot be modified until Government Code section 68153 is amended. If the Legislature amends section 68153 as recommended by CEAC, CEAC will consider proposing rule amendments to implement this change.</p>
				<p>CEAC appreciates the court’s input.</p>

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

First Comment Cycle				
Commentator	Position	Comment	Response	
		<p>Would the proposal provide cost savings? If so, please quantify.</p> <p><i>Yes, the proposal will definitely provide cost savings to the courts. Whereas current requirements of 100% retention every 19 years, Los Angeles would have to store roughly 870,000 cases, as estimated by Judicial Council, equal to about 34,800 linear feet of space each rotation. That is in addition to each year's 10% systematic sampling which for Los Angeles equates to about 27,500 cases or 1,100 linear feet of space each year. Essentially, from filing year 1978 to present, Los Angeles would have to permanently retain about 2,647,500 files taking up roughly 105,900 linear feet of space. This can be estimated at \$3,500,000 in annual savings in for an electronic conversion project.</i></p> <p><i>In addition, the amount of time it would take staff to separate these files, label them accordingly, and store them in an area for permanent retention would be saved. These could save hundreds of hours of time given the volume of files being retained under the current requirements. For example, for Los Angeles, if 40 employees were working on permanent retention of the required cases for all courthouses, it could take about 20 working days to complete. This can be estimated at about \$130,000 in savings per year.</i></p>		

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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First Comment Cycle				
Commentator	Position	Comment	Response	
		<p>What would the implementation requirements be for courts?</p> <ol style="list-style-type: none"><i>1. Communication to all operations/records managers and administrators will be required.</i><i>2. Revised policies and procedures for all general jurisdiction court records maintenance and destruction will be necessary. This would include revising processes to indicate the inventory range of cases for the rotation year, appropriate labeling of case files for permanent retention, removing directives to retain systematic and subjective sampling, and removing system requirements when pulling destruction inventory reports from the respective case management systems. In addition, new procedures will have to be created to address the requirement of permanently retaining all cases that have a California Supreme Court written decision. This requirement will impact not only records management functions, but will also require case processing/courtroom operations staff to flag these files in some manner to reflect permanent retention in both the case management system and on the physical file or in the document management system for the electronic file.</i>		

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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First Comment Cycle				
	Commentator	Position	Comment	Response
			<p>3. <i>Training of staff will be required once the revised policies and procedures are implemented. This would include training all supervisory and management staff, then all staff directly impacted by these changes. In addition to records management staff, training other staff to flag cases which a Supreme Court written decision exists will also be required. A rough estimate for hours of training would be from 1-2 hours, depending on the complexity of the requirements.</i></p> <p>4. <i>Technical programming will also be necessary to accommodate the new requirements. Programming changes include adding a docket code or flag in the various case management systems to reflect the case is permanent retention due to longitudinal sampling and also due to Supreme Court written decision. Coding for current destruction eligibility reports will also need to be modified to remove the systematic sampling exemptions and to add Supreme Court written decision exemption.</i></p>	
3.	Superior Court of California, County of Riverside by Marita Ford, Sr. Management Analyst	A	No specific comment.	CEAC appreciates the court's support.
4.	Superior Court of Sacramento County by Rebecca Reddish, Business Analyst	A	No specific comment.	CEAC appreciates the court's support.

W16-16 and SP16-01**Court Records: Records Sampling and Destruction** (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

First Comment Cycle				
	Commentator	Position	Comment	Response
5.	Superior Court of San Diego County by Michael M. Roddy, Court Executive Officer	A	No specific comment.	CEAC appreciates the court's support.

Second Comment Cycle				
	Commentator	Position	Comment	Response
6.	Diana Molina	NI	<p>These documents are critical and should be retained. They can be scanned to jpeg files with minimal effort. These records are a record of our legal history. Keep the documentation. It's not that difficult or costly.</p> <p>Record retention. I must object to widespread destruction of records. In particular, records from criminal proceedings. There are far too many procedurally flawed records and evidence should be retained.</p>	<p>CEAC appreciates Ms. Molina's input. Because of the volume of records involved, scanning and maintaining these court records in electronic form is a considerable costs for courts.</p> <p>These amendments modify only the rule governing the sampling of court records for historical and research purposes. They do not have any bearing on the statutory records retention periods. Accordingly, CEAC expects that the amendments will have only a limited impact on the retention of court records in criminal cases. Because misdemeanor cases are outside the scope of rule 10.855, these amendments would affect only the retention of court records in felony cases. Superior courts must still retain the court records for felony cases for 50 years after final disposition of the case under Government Code section 68152(c)(2). Only after the 50-year period has elapsed (and only if the record is not subject to being preserved as a sample court record) would courts have the discretion to destroy these court records.</p>

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

Second Comment Cycle				
	Commentator	Position	Comment	Response
7.	Superior Court of Fresno County by Fran Raley, Archives Division Manager	NI	<p>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.</p> <p>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.</p> <p><i>(4) Any judgment books maintained separately from the case files would be destroyed.</i> <i>(5) Any minute books separate from the case files would be destroyed.</i> <i>(6) All registers of action separate from CMS or case files would be destroyed.</i></p>	<p>CEAC appreciates the court’s input. Based on a follow-up conversation with Ms. Raley, staff learned that the court does not retain judgment books separately from case files. Accordingly, the amendment to subdivision (c)(4) would have no effect on the court.</p> <p>To provide further clarification, judgment books, minute books, and registers of action are still subject to the records retention provisions in Government Code section 68152, which require that judgments in felony and unlimited civil cases be preserved permanently and that minutes and registers of action be preserved for the same</p>

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

Second Comment Cycle				
	Commentator	Position	Comment	Response
			<p><i>Would add a new requirement to preserve records for cases in which the California Supreme Court has issued a written opinion.</i></p> <p><i>There currently is nothing in place to track these types of cases.</i></p>	<p>retention period as the underlying case type.</p> <p>Under current rule 10.855(f)(2), superior courts are required to retain “all cases accepted for review by the California Supreme Court.” These amendments provide that the Supreme Court must issue an opinion for the court records to be subject to preservation. In effect, they would reduce the number of Supreme Court cases that must be preserved under the rule by eliminating the requirement that superior courts preserve court records for “grant and hold” cases.</p> <p>These amendments would also add an Advisory Committee comment that would require the Judicial Council to make available a list of all noncapital cases in which the California Supreme Court issues a written opinion. This list is intended to assist superior courts in identifying which Supreme Court cases must be preserved.</p>
			<p><i>Pre-1950 records and case indexes.</i> 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</p>	<p>CEAC appreciates the court’s input.</p>

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

Second Comment Cycle				
Commentator	Position	Comment	Response	
		<p>the superior courts. The costs related to storing these records are relatively minimal.</p> <p><i>This is already done. This would not impact us at all.</i></p>		
		<p>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 cases—whether they are kept in the case files or kept separately—must already be preserved permanently under Government Code section 68152.</p> <p><i>This would allow us to destroy Judgment Books since the Judgments must be preserved permanently.</i></p>	<p>CEAC appreciates the court’s input. Based on a follow-up conversation with Ms. Raley, staff learned that the court does not retain judgment books separately from case files. Accordingly, this amendment to subdivision (c) would have no effect on the court.</p> <p>To provide further clarification, CEAC does not intend this amendment to subdivision (c) to effect any changes in records retention practices. Because Government Code section 68152 separately requires that superior courts permanently preserve judgments in felony and unlimited civil cases, the committee decided that it was unnecessary to repeat this requirement in the rule.</p>	
		<p>Minute books. The proposed amendments would eliminate the requirement in subdivision (c)(5) to preserve minute books because it</p>	<p>To clarify, these amendments would not affect the records retention provisions in Government Code section 68152, which provide that minutes</p>	

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

Second Comment Cycle				
Commentator	Position	Comment	Response	
		<p>creates varying records retention practices among courts statewide. Government Code section 68152 does not differentiate between minutes kept in the case files and those kept separately in minute books; both are eligible for destruction under the statute once the retention period for the underlying case type has expired. 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.</p> <p><i>We will have to preserve any minute books we have permanently.</i></p>	<p>must be retained for the same period as the underlying case type. Accordingly, superior courts may destroy minute books after that retention period has elapsed. For unlimited civil cases, the retention period is 10 years; for felony cases, 50 years. (See Gov. Code, § 68152(a)(2), (c)(2).)</p>	
		<p>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.” 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. 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</p>	<p>To clarify, these amendments would not affect the records retention provisions in Government Code section 68152, which provide that registers of action must be retained for the same period as the underlying case type. Accordingly, superior courts may destroy minute books after that retention period has elapsed. For unlimited civil cases, the retention period is 10 years; for felony cases, 50 years. (See Gov. Code, § 68152(a)(2), (c)(2).)</p>	

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

Second Comment Cycle				
Commentator	Position	Comment	Response	
		<p>registers of action or preserves all court records filed, lodged, or maintained in connection with the case in the case file.</p> <p><i>We will have to preserve any register of actions we have permanently.</i></p>		
		<p><i>Cases in which there is a Supreme Court opinion.</i> 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.</p> <p><i>A procedure must be put in place to identify those cases in which the California Supreme Court has issued a written opinion.</i></p> <p><i>The best way to track this is to stamp every fourth file as it is produced at Archives. Since we are already three months into the year, we should provide a list to all departments indicating every fourth file and provide them with a stamp “Longitudinal Sample. DO NOT</i></p>	<p>These amendments would add an Advisory Committee comment that would require the Judicial Council to make available a list of all noncapital cases in which the California Supreme Court issues a written opinion. This list is intended to assist superior courts in identifying which Supreme Court cases must be preserved.</p>	<p>CEAC appreciates the court’s input.</p>

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Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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Second Comment Cycle				
Commentator	Position	Comment	Response	
		<p><i>DESTROY</i>". Otherwise, we would have to make sure that the files are stamped when returned to Archives. This would greatly impact the Stock Clerks and greatly slow down the File Pick Up process.</p>		
		<p>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. 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.</p> <p>Preservation of a partial sample. Fresno Superior Court's year is 2016. This will reduce the amount of files we have to maintain for 2016. Instead of keeping 100% of our court records we would be required to keep 25% (i.e. every fourth case) for our selection year.</p>		

W16-16 and SP16-01

Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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

Second Comment Cycle				
Commentator	Position	Comment	Response	
		<p><i>The best way to track this is to stamp every fourth file as it is produced at Archives. Since we are already three months into the year, we should provide a list to all departments indicating every fourth file and provide them with a stamp “Longitudinal Sample. DO NOT DESTROY”. Otherwise, we would have to make sure that the files are stamped when returned to Archives. This would greatly impact the Stock Clerks and greatly slow down the File Pick Up process.</i></p> <p>Preservation of judgment books, minute books, and registers of action. The court will be required to preserve all judgment books, minute books, and registers of action for their assigned longitudinal year sample.</p> <p><i>Judgement books – No impact. Separate judgment books are not kept.</i> <i>Minute Books – No impact. Separate minute books are not kept. All minutes are kept in the file.</i></p> <p><i>Registers of action – No impact. Registers of action are kept on the CMS.</i></p>	<p>CEAC appreciates the court’s input.</p>	
		<p>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</p>	<p>CEAC appreciates the court’s input.</p>	

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Court Records: Records Sampling and Destruction (Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855)

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Commentator	Position	Comment	Response	
		<p>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.</p> <p><i>If the new proposal is accepted, the requirement that when not participating in the longitudinal sample a systematic sample of 10% or more, but no less than 100 cases of that year's records would be eliminated. This would reduce operational and storage costs significantly.</i></p>	CEAC appreciates the court's input.	
		<p>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.</p> <p><i>Eliminating the subjective sample.</i> 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</p>	CEAC appreciates the court's input.	

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		<p>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.</p> <p><i>The elimination of the subjective sample record requirement would benefit the Court.</i></p> <ol style="list-style-type: none"> 1. <i>We may be able to destroy some of the green bars under this new proposed amendment.</i> 2. <i>A procedure would have to be developed to track cases accepted for review by the California Supreme Court, other than Capital cases.</i> <ol style="list-style-type: none"> a. <i>The Appeals Department would receive a copy and could track these cases by creating a log. Normally the file has already been returned to Archives. In that case, Appeals would share the log with Archives and we would identify the file by a stamp. Those files receiving an opinion still housed in the department would be stamped by that department.</i> 3. <i>Although the Court would still be authorized to retain records identified internally as significant, i.e., high-profile</i> 	<p>CEAC appreciates the court’s input. Based on a follow-up conversation with Ms. Raley, staff learned that most of the “green bar” court records are misdemeanor and infraction cases, which are not subject to rule 10.855’s sampling program. Instead, the court is largely preserving these records because there is no final disposition in these cases.</p> <p>These amendments would add an Advisory Committee comment that would require the Judicial Council to make available a list of all noncapital cases in which the California Supreme Court issues a written opinion. This list is intended to assist superior courts in identifying which Supreme Court cases must be preserved.</p>	

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		<p><i>cases covered by the media. The court would no longer have to preserve 2 percent of their court records each year and would not have to retain a case according to its size.</i></p>		
		<p><i>Preservation of cases in which there is a Supreme Court opinion (revised).</i> 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.”</p> <p>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.</p> <p>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</p>		

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		<p>Comment to explain why capital cases are not included in this requirement.</p> <p><i>This will apply to all noncapital cases as well. This will impact the Court by requiring that a procedure be developed and the cases identified by a stamp on the file folder.</i></p> <ol style="list-style-type: none"> 1. <i>Logs will have to be created.</i> 2. <i>Stamps created.</i> 3. <i>Training staff.</i> 4. <i>Communication between all departments.</i> 	<p>CEAC appreciates the court’s input. These amendments would add an Advisory Committee comment that would require the Judicial Council to make available a list of all noncapital cases in which the California Supreme Court issues a written opinion. This list is intended to assist superior courts in identifying which Supreme Court cases must be preserved.</p>	
		<p>Augmented sample records</p> <p>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.</p> <p><i>This will not impact the Court, because we do not have this procedure in place and the Judicial Council is eliminating it.</i></p>	<p>CEAC appreciates the court’s input.</p>	

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		<p>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.</p> <p>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</p>		

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		<p>previously preserved their court records under the current rule.</p> <p>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.</p> <p><i>Under the proposed amendment of retroactive implementation, since Fresno regularly reviews its court records for destruction, <u>we did not preserve 10 percent of Civil limited and Small Claims.</u> We do however have more than 10 percent of the other case types for 1995 per the current systematic sample. Under the proposed amendment we have to preserve 25 percent per the proposed longitudinal sample. The year 2016 is our next sampling period.</i></p>	<p>CEAC appreciates the court’s input. To clarify, the amendments to rule 10.855 do not expand its scope to include civil limited and small claims cases. If the court applies the amendments retroactively, it would not be required to retain a sample of these cases.</p>	

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		<p><i>The plus is that we may be able to destroy some of the green bars and daily file folders according to this proposal. We have well over 43,000 green bars stored at Archives. Destroying these files would free up needed space.</i></p>	<p>Based on a follow-up conversation with Ms. Raley, staff learned that most of the “green bar” court records are misdemeanor and infraction cases, which are not subject to the sampling program in rule 10.855. Instead, the court is preserving these records largely because there is no final disposition in these cases.</p>	
		<p>Request for Specific Comments In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:</p> <p><i>As a whole, the proposed amendments would be a benefit. It would result in decreased record retention. Eliminating the subjective sample that requires the court to retain 2% of its files per year. Also with the modification of the longitudinal sample from 100% to 25%. And allowing destruction of any judgment books, minute books kept separately from case files, and all registers of action for their non-longitudinal sample year would free up much needed space. The impact to those courts that must retain judgment books, minute books kept separately from case files, and all registers of action for their longitudinal sample year, the impact would be minimal.</i></p> <p><i>With changes come new procedures and training of staff. Not only in the Archives record retention, but the court as a whole. It will require close monitoring and communication</i></p>	<p>CEAC appreciates the court’s input.</p>	

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		<p><i>between all departments.</i></p> <p>Does the proposal appropriately address the stated purpose? <i>Yes, see a benefit to all courts. Even to those that have contracted out their record storage.</i></p> <p>Would applying the proposed amendments retroactively to all courts be beneficial? Would it cause any issues or raise any concerns?</p> <p><i>Applying the proposed amendments retroactively to all courts would raise concerns as to being in compliance for past sampling years. There is also an issue as to record storage and staffing. Many of the records require research and the court will need time to implement the changes and possible work space and staff.</i></p> <p>The advisory committee also seeks comments from <i>courts</i> on the following cost and implementation matters:</p> <p>Would the proposal provide cost savings? If so please quantify. <i>Need for space in the future can be limited.</i></p> <p>What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising</p>	<p>CEAC has added an Advisory Committee Comment to rule 10.855 to provide that courts would still be compliant with the sampling requirements if they apply them retroactively.</p> <p>CEAC appreciates the court’s input.</p>	

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		<p>processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?</p> <p><i>Training Staff</i></p> <ol style="list-style-type: none"> 1. <i>Managers 4 hrs.</i> 2. <i>Stock Clerks 4 hrs.</i> 3. <i>Office Assistants 4 hrs.</i> 4. <i>Judicial Assistants 4 hrs.</i> 5. <i>Labeling Staff (SVS) 4 hrs.</i> 6. <i>Over time needed to track cases and identify cases for sample year</i> <p><i>Revising processes and procedures</i></p> <ol style="list-style-type: none"> 1. <i>Tracking Cases with Supreme Court Opinions</i> 2. <i>Creating stamps to identify files</i> 3. <i>Possibly identifying files with a different color file folder (if advance notice had been given)</i> 4. <i>Anticipating storage of 2016 files for 2019</i> <p><i>Docket Codes</i></p> <ol style="list-style-type: none"> 1. <i>Creating new docket codes to flag CMS</i> 2. <i>Supreme Court Opinion</i> 3. <i>Longitudinal study</i> <p><i>Modifying case management system</i></p> <ol style="list-style-type: none"> 1. <i>To automatically identify a case in longitudinal (every fourth case)</i> 2. <i>Identify cases Supreme Court Opinions</i> 		

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			<p>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? <i>I do not believe two months from approval is sufficient time for implementation. Staff training, supplies, creation of docket codes, modification of CMS needed. We will be further along in the year and will have to play catch up to get these cases identified.</i></p> <p>How well would this proposal work in courts of different sizes? <i>I see this proposal as a benefit to all courts. Procedures, training, tracking, and modifications to the court's CMS will have to occur. It will impact a court whether it is big or small.</i></p>	<p>CEAC appreciates the court's input. Because the court is currently preserving 100 percent of its court records for 2016, it would not need to make any changes to its records management practices by July 1, 2016. To take advantage of the reduction in court records that must be preserved under the new sampling program, the court may make implementing changes at a later date.</p>
8.	Superior Court of Riverside County by Marita Ford, Senior Management Analyst	A	No specific comment.	CEAC appreciates the court's support.
9.	Superior Court of Solano County by Lezlee Offutt, Supervising LPC - Records	A	<p>Extremely glad the rule is now retroactive to those courts whom have been destroying records. This will alleviate numerous cases in storage.</p> <p>Changing the rotation assignment years is not burdensome since retroactive applies.</p>	CEAC appreciates the court's input.