

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Policy Coordination and Liaison Committee
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DATE: November 13, 2009

SUBJECT: Judicial Council–sponsored Legislation: Modernizing Trial Court Records
Management (amend Gov. Code, §§ 68150 and 68151) (Action
Required)

Issue Statement

The purpose of this legislative proposal is to modernize the statutes on the management of court records so that the courts will be able to operate in a more efficient, cost-effective manner using contemporary technology. Specifically, Government Code section 68150 is proposed to be amended to authorize courts to create, maintain, and preserve records in any form or forms—including paper, optical, electronic, magnetic, micrographic, or photographic media or other technology—that satisfies standards or guidelines. The statute would require the Judicial Council to adopt rules to establish the guidelines or standards for the creation, maintenance, reproduction, and preservation of court records. The amended statutes would not apply to court reporters' transcripts or electronic recordings made as the official record of oral proceedings.

Recommendation

The Policy Coordination and Liaison Committee and Court Executives and Court Technology Advisory Committees¹ recommend that the Judicial Council sponsor legislation to amend Government Code sections 68150 and 68151 to modernize the statutes on the management of court records.

The text of amended Government Code sections 68150 and 68151 is attached at pages 7–9.

Rationale for Recommendation

Court records historically have been maintained in paper form. In California, a vast amount of storage space is currently devoted to paper files of court records. A survey in 2007 indicated that court records are stored in 276 locations throughout the state (courthouse and off-site facilities), totaling 1,854,992 linear feet.² The total costs associated with records management during fiscal year 2005–2006 was \$21,619,815. Annual storage costs totaled \$1,814,530. Staff costs for this same period totaled \$14,908,919. Two-thirds of the courts retrieve records every day; on average, court staff travel 15 miles to do so.

In short, court records in paper form are expensive to create, maintain, access, and preserve. But with the increasing availability of electronic document management systems, courts have an opportunity to realize significant long-term savings if they can convert from paper to electronic records. Authorizing records to be created, maintained, and preserved in electronic forms is practical and makes economic sense.

In the federal district courts, electronic records are already the official records of the courts. In California, the trial courts should be able to shift toward electronic records as the official records. This change will become easier and more cost-effective as parties are able to prepare and file documents electronically. Already, most documents are prepared electronically and printed out in hard copy to be filed with the court. As technology advances, parties will be able to file documents electronically with the courts, and courts will be able to enter these electronically filed documents into their electronic document systems without the documents ever needing to be printed or scanned.

Some statutory changes are required to facilitate the transition to electronic court records. The statutes on court records already have been modernized, in some respects, to reflect the digital age. For example, section 68150 of the Government Code provides that records reproduced under specific standards may be deemed the original court record. (See Gov. Code, § 68150(c).) However, additional changes are necessary to fully realize

¹ This proposal was developed by the Court Executives Advisory Committee's Working Group on Alternatives to Document Management, chaired by Kim Turner. Both advisory committees have reviewed the proposal and the comments and strongly support the legislation.

² Forty-nine of the 58 courts provided responses to the survey.

the possibilities afforded by electronic records management and advances in technology and business practices.

Legislative proposal

This proposal recommends that two sections of the Government Code relating to the management of trial court records be amended to enable courts to modernize the methods of creating, maintaining, and preserving records.

Amendments to Government Code Section 68150

The principal statute on the management of trial court records currently provides that trial court records may be preserved in any form of communication or representation, including optical, electronic, magnetic, micrographic, or photographic media or other technology, provided the medium satisfies certain minimum standards or guidelines for the preservation and reproduction of the medium that have been adopted by the American National Standards Institute or the Association for Information and Image Management. (See Gov. Code, § 68150(a).) Several changes are proposed to modernize this section and make it more effective.

First, in the first sentence of Government Code section 68150, the words “created” and “maintained” would be added before “preserved.” (See proposed Gov. Code, § 68150 (a).) This change would make it clear that courts can not only preserve but also create and maintain records in electronic form. Thus, under the amended statute, courts would be authorized to electronically generate documents such as court orders, file these documents in the courts’ electronic document management systems, and maintain these documents electronically as the official records of the court. Similarly, the changes would clarify that electronic documents prepared and filed by parties and entered into courts’ electronic document management systems can be the official records of the court. While courts may still preserve records in paper form, they would no longer be required to do so for most court records.

Second, the current references in subdivision (a) to standards or guidelines adopted by particular organizations would be eliminated. This language has been problematic in that the organizations have not always adopted specific standards for certain media or categories of documents. Instead of requiring records to comply with guidelines or standards adopted by specific organizations, a new subdivision (c) would require the Judicial Council to adopt rules to establish standards or guidelines for the creation, maintenance, reproduction, and preservation of court records.

This approach is more practical and flexible than that contained in the existing statute. It would enable the standards or guidelines to be regularly revised to reflect best practices and current industry standards, to be expeditiously updated to address changes in

technology, and to cover situations where no specific national standards or guidelines have been promulgated.³

Third, new text in subdivision (b) would be added to make it clear that this entire section on trial court records does not apply to court reporters' transcripts or electronic recordings made as the official record of oral proceedings. (See proposed Gov. Code, § 68150(b).) These matters are dealt with elsewhere in the law.

Finally, all of the applicable subdivisions of section 68150 would be modified to state that they apply to the creation and maintenance, as well as to the preservation, of court records. (See proposed Gov. Code, § 68150(f)–(h).) Conforming amendments would also be made throughout the section so that references to standards and guidelines adopted by particular organizations would be eliminated. (See former subdivision (f) and amended subdivision (j).)

Amendments to Government Code Section 68151

Government Code section 68151 provides definitions of “court records” and other terms used in the chapter on the management of trial court records. To reflect the amendments to section 68150 described above, section 68151(d) would be amended to read: “‘Retain permanently’ means that the court records shall be maintained permanently according to standards or guidelines established under section 68150(c).”

Alternative Actions Considered

The advisory committees discussed whether this legislation should be introduced later or should have a delayed effective date. The committees concluded that it is important to act promptly to modernize the court records statutes. Particularly now that electronic filing is being introduced more widely and courts' document management systems are being modernized, courts need to have clear legal authority to create, maintain, and preserve records in electronic as well as paper form.

Comments From Interested Parties

This legislative proposal was circulated in a special cycle in fall 2009. Fourteen comments were received on the proposal. A chart summarizing the comments and the committees' responses is attached.

Most of the commentators supported the proposal. As one court commentator noted, “If enacted, this excellent legislation could help trial courts statewide save millions of dollars in records retention, storage, and retrieval costs.” (Comment 9.) Another commentator said, “We feel that this proposed legislation is foundational to the work we need to do in

³ If the Judicial Council sponsors this legislative proposal, a companion proposal for rules to establish standards or guidelines for the creation, maintenance, reproduction, and preservation of court records will be developed and circulated for comment in 2010. Both the legislation and the accompanying rules would become effective at the same time, i.e., January 1, 2011.

order to modernize the creation, management, and archival of court documents.” (Comment 11.) As these comments indicate, the courts may be able to realize substantial savings if this legislation is enacted.

The California Court Reporters Association (CCRA) commented that the organization intends to oppose the legislation unless it is amended (1) to add court reporter transcripts as an exception under Government Code section 61850(b) and (2) to remove any mention of court reporter transcripts from the definition of a court record in 68151(a)(2). (See comment 1; see also comment 5.) Regarding the first suggestion, the committees agreed that subsection 68150(b) should be modified to clarify that the amended section 68150 does not apply to reporters’ transcripts. But they did not agree with the rationale for amending subdivision (a)(2) of section 68151. That subdivision on administrative records is not changed under the proposed legislation; indeed, the only proposed change to this entire section is to amend the definition of “retained permanently” in subdivision (d) to conform to the changes proposed in section 68150.

The committees are concerned that the CCRA’s suggestion to change the definition of “court record” in subdivision (a)(2) relating to administrative records may have unanticipated and adverse effects (for example, regarding the preservation of court records or the content of records on appeal). They are open to further clarification of the CCRA’s suggestions. But at this point, it appears that the association’s recommendation regarding section 68151(a)(2) involves entirely separate issues about court records that are beyond the scope of the current proposal for legislation and what was circulated for comment. The committees thought that these matters would best be dealt with apart from the present proposal to modernize the court records statutes to permit substantial savings by authorizing these records to be created, maintained, and preserved in electronic form.

A nationwide legal news service organization commented that it believes the proposed amendments do not go far enough because they do not address the following: (1) the administrative tasks involved in making court records available for electronic viewing often result in delays and viewing documents electronically is often more cumbersome than accessing the paper record, and (2) courts may charge high fees for access to electronic records. (See comment 2.) The committees believed that these particular suggestions go beyond the scope of the present proposal, which simply provides a sound legal foundation for modernizing court records.

A disability rights organization suggested that a section be added to the legislation to assist persons with visual impairment to have greater access to court records. (See comment 3.) The committees recognized the importance of assisting persons with visual impairments but thought that this particular suggestion was beyond the scope of the present proposal. They also noted that the creation and maintenance of court records in electronic form will open up greater opportunities to assist the visually impaired in obtaining access to records than is currently available in the paper environment.

A court commentator observed that amended section 68150 does not contain any specific language indicating whether a court file is to be maintained in one medium or may be in more than one medium. (See comment 9.) The committees agreed that this issue should be clarified. It will be very beneficial if all court records are eventually in electronic form. But because courts may need to maintain records in more than a single medium during the transition period to electronic records, it is desirable to state expressly in the statute that records may be maintained in more than one form. Hence, the language in subdivision (a) has been modified to authorize records to be created, maintained, and preserved in “any form *or forms*.”

Implementation Requirements and Costs

This legislative proposal requires no immediate implementation and imposes no immediate costs on the courts. It simply authorizes courts to create, maintain, and preserve records in electronic form. Accomplishing this will eventually require implementation and courts will incur costs for modernizing their records, but it should result in significant long-term savings.

Attachments

Government Code sections 68150 and 68151 would be amended to read as follows:

1 **68150.** (a) Trial court records may be created, maintained, and preserved in any form or
2 forms of communication or representation, including paper, optical, electronic, magnetic,
3 micrographic, or photographic media or other technology provided that the form or forms
4 satisfy the requirements of subdivision (c) eapable of accurately producing or
5 reproducing the original record according to minimum standards or guidelines for the
6 preservation and reproduction of the medium adopted by the American National
7 Standards Institute or the Association for Information and Image Management.

8
9 (b) This section does not apply to court reporters' transcripts. Neither does it apply to
10 specifications for electronic recordings made as the official record of the oral
11 proceedings; such records shall be governed by the California Rules of Court rather than
12 this section. Electronic recordings made as the official record of oral proceedings shall
13 not require a backup copy unless otherwise specified in the California Rules of Court.

14
15 (c) The Judicial Council shall adopt rules to establish the standards or guidelines for the
16 creation, maintenance, reproduction, and preservation of court records, including records
17 that must be preserved permanently.

18
19 ~~(b)~~(d) No additions, deletions, or changes shall be made to the content of the records,
20 except as authorized by statute or the California Rules of Court.

21
22 (e) The records shall be indexed for convenient access.

23
24 ~~(e)~~ (f) A copy of the a record created, maintained, preserved, or reproduced according to
25 subdivisions (a) and ~~(b)~~ (c) shall be deemed the an original court record and may be
26 certified as a correct copy of the original record.

27
28 ~~(d)~~(g) A court record created, maintained, preserved, or reproduced in accordance with
29 subdivisions (a) and ~~(b)~~ (c) shall be stored in a manner and in a place that reasonably
30 assures its preservation against loss, theft, defacement, or destruction for the prescribed
31 retention period under section 68152. Electronic recordings made as the official record
32 of the oral proceedings shall not require a backup copy unless otherwise specified in the
33 California Rules of Court.

34
35 ~~(e)~~ (h) The A court record that was created, maintained, preserved, or reproduced in
36 accordance with subdivisions (a) and ~~(b)~~ (c) may be disposed of in accordance with the
37 procedure under section 68153, unless it is subject to subdivision (f).;

38 ~~(f) The following court records may be preserved or reproduced under subdivisions (a)~~
39 ~~and (b) but shall also be preserved on paper, microfilm, or in another form of~~
40 ~~communication or representation approved by and in accordance with standards that are~~

1 defined as archival by the American National Standards Institute for the duration of the
2 record's retention period:

3 (1) A comprehensive historical and sample superior court record preserved for research
4 under the California Rules of Court; or

5 (2) A court record that must be preserved permanently.

6 ~~—Court records that must be preserved longer than 10 years but not permanently may be~~
7 ~~reproduced on media other than paper or microfilm using technology authorized under~~
8 ~~subdivisions (a) and (b). However the records shall be reproduced before the expiration~~
9 ~~of their estimated lifespan for the medium in which they are stored as specified in~~
10 ~~subdivision (g).~~

11
12 ~~(g)(i)~~ Instructions for access to data stored on a medium other than paper shall be
13 documented.

14
15 (j) Each court shall conduct a periodic review of the media in which the court records are
16 stored to ensure that the storage medium is not obsolete and that current technology is
17 capable of accessing and reproducing the records. The court shall reproduce records
18 before the expiration of their estimated lifespan for the medium in which they are stored
19 according to ~~minimum standards and or guidelines for the preservation and reproduction~~
20 ~~of the medium adopted by the American National Standards Institute or the Association~~
21 ~~for Information and Image Management established by the Judicial Council.~~

22
23 ~~(h)(k)~~ Unless otherwise provided by law, court records created, maintained, preserved, or
24 reproduced under subdivisions (a) and ~~(b)(c)~~ shall be made reasonably accessible to all
25 members of the public for viewing and duplication as would the paper records.

26 Reasonable provision shall be made for duplicating the records at cost. Cost shall consist
27 of all costs associated with duplicating the records as determined by the court.

28
29
30 **68151.** The following definitions apply to this chapter:

31 (a) "Court record" shall consist of the following:

32 (1) All filed papers and documents in the case folder; but if no case folder is created by
33 the court, all filed papers and documents that would have been in the case folder if one
34 had been created.

35 (2) Administrative records filed in an action or proceeding, depositions, paper exhibits,
36 transcripts, including preliminary hearing transcripts, and tapes of electronically recorded
37 proceedings filed, lodged, or maintained in connection with the case, unless disposed of
38 earlier in the case pursuant to law.

39 (3) Other records listed under subdivision (j) of section 68152.

40
41 (b) "Notice of destruction and no transfer" means that the clerk has given notice of
42 destruction of the superior court records open to public inspection, and that there is no
43 request and order for transfer of the records as provided in the California Rules of Court.

1
2 (c) “Final disposition of the case” means that an acquittal, dismissal, or order of
3 judgment has been entered in the case or proceeding, the judgment has become final, and
4 no postjudgment motions or appeals are pending in the case or for the reviewing court
5 upon the mailing of notice of the issuance of the remittitur.

6 In a criminal prosecution, the order of judgment shall mean imposition of sentence,
7 entry of an appealable order (including, but not limited to, an order granting probation,
8 commitment of a defendant for insanity, or commitment of a defendant as a narcotics
9 addict appealable under section 1237 of the Penal Code), or forfeiture of bail without
10 issuance of a bench warrant or calendaring of other proceedings.

11
12 (d) “Retain permanently” means that the ~~original~~ court records shall ~~never be transferred~~
13 ~~or destroyed~~ maintained permanently according to standards or guidelines established
14 under section 68150(c).

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

	Commentator	Position	Comment	Committees’ Response
1.	California Court Reporters Association Thomas E. Pringle Chair of the Judicial Procedures Committee	AM	<p>It is the position of the California Court Reporters Association to oppose this legislation unless amended to add court reporter transcripts as an exception under Gov. Code section 68150(b) and to remove any mention of court reporter transcripts from the definition of a court record under section 68151(a)(2).</p> <p>The language currently proposed is in conflict with Gov. Code 69955(d) which states, “Any court, party, or person who has purchased a transcript may, without paying a further fee to the reporter, reproduce a copy or portion thereof as an exhibit pursuant to court order or rule, or for internal use, but shall not otherwise provide or sell a copy to any other party or person.”</p> <p>It has long been the practice of the superior courts of California to refer transcript requests to the court reporter. It is well known to the Judicial Council and the Legislature that the transcript fees for official reporters is 20-plus years old; to implement a procedure whereby the fees are reduced by any</p>	<p>Regarding the first suggestion, the committees agreed that subsection 68150(b) might be further modified to clarify that amended section 68150 does not apply to reporters’ transcripts.</p> <p>However, the committees did not agree with CCRA’s suggestion to make changes to section 68151(a)(2). The proposed legislation does not seek to change subdivision (a)(2) in any respect. It recommends no changes in the law with regard to the use of deposition transcripts. Indeed, the only proposed change to section 68151 is to amend the definition of “retained permanently” in subdivision (d) to conform to the changes proposed in section 68150.</p> <p>The committees are concerned that the CCRA’s suggestion to change the definition of “court record” in subdivision (a)(2) relating to administrative records, as provided under current law, may have adverse and unanticipated effects (for example, regarding the preservation of court records or the content of records on appeal). The committees are open to</p>

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			<p>amount at this time is unacceptable. In addition, in some counties the terms of production of and charging for transcripts are part of the MOUs.</p> <p>Secondly, to include deposition transcripts under section 68151 is also unacceptable. It provides a mechanism for mischief that could result in the significant loss of income to the independent contractor freelance reporters and firms. As it stands today, the only way to get a certified copy of deposition transcripts is through the reporter; this legislation puts the court in the deposition business in direct competition with deposition reporters. It is unfair for a nonprofit taxpayer-funded government organization to compete against private enterprise of any kind.</p> <p>Lastly, at the very least, this is extremely premature. The court has not implemented a statewide format for reporter transcripts, which vary from county to county, not to mention that deposition transcripts are formatted altogether differently; software issues</p>	<p>further clarification of the CCRA’s recommendation. But at this point, it appears that its second suggestion involves entirely separate issues about court records that are beyond the scope of the current proposed legislation that was circulated for comment. The matters raised by CCRA about deposition transcripts are best dealt with apart from the present proposal to modernize the court records statutes to permit substantial savings by authorizing documents filed with the courts to be created, maintained, and preserved in electronic form.</p> <p>This proposal does not address court reporter transcripts or their format. Moving this proposal forward will have no effect on that question but will simply provide a sound legal foundation for modernizing court records.</p>

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			have not been addressed. This is truly putting the cart before the horse.	
2.	Courthouse News Service Rachel Matteo-Boehm Attorney	AM	<p>On behalf of Courthouse News Service, a nationwide legal news service, we are pleased to submit this letter in response to the Judicial Council’s invitation for written comments on its proposed legislation that would amend Government Code sections 68150 and 68151 pertaining to management of trial court records.</p> <p>With reporters covering civil actions in courts in virtually every state across the country, Courthouse News has a nationwide perspective on the consequences of eliminating the paper court record in favor of an electronic courthouse and has two primary concerns. First, Courthouse News has observed that the administrative tasks involved in making court records available for electronic viewing often result in significant delays in access to newly filed court documents and that viewing documents in an electronic</p>	Courthouse News Service’s specific comments go beyond the scope of the present proposal, which simply provides a sound legal foundation for modernizing court records.

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			<p>format is often far more cumbersome that accessing the paper record. Second, Courthouse News has in some cases seen courts charge high fees for access to electronic records, in effect using the public court records as a means to finance court operations.</p> <p>As discussed more fully below, the proposed amendments, which do not address either of these issues, do not go far enough to ensure that timely, efficient ,and cost-effective media access to public court records does not suffer as those records are increasingly converted into and maintained in an electronic format.</p> <p><u>Electronic Access to Court Records Is Often Burdensome And Untimely</u></p> <p>The presumption of public access to civil court records in California is strong. <i>NBC Subsidiary (KNBC-TV), Inc. v. Superior Court</i>, 20 Cal. 4th 1178, 1208 n.25 (1999) (recognizing First Amendment right to access to civil court records); <i>accord, e.g., Savaglio v. Wal-</i></p>	

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			<p><i>Mart Stores, Inc.</i>, 149 Cal App. 4th 588, 596 (2007); <i>Burkle v. Burkle</i>, 135 Cal. App 4th 1045, 1062 (2006).</p> <p>Under rule 2.550 of the California Rules of Court, there is a right of access to any document that has been “filed <i>or lodged</i> with the court.” Rule of Court 2.550(b)(1) (emphasis added). Once a record has been filed or lodged, subdivision (c) of that rule provides that the record is “presumed to be open” to public inspection. A record is “lodged” with the court when it is “temporarily placed or deposited with the court, but not filed.” Rule 2.550(b)3).¹</p> <p>Rule of Court 2.550 thus recognizes that the public character of documents filed with a court comes not from the court’s taking any particular action with respect to a document, such as scanning it or completing other tasks necessary to make the document electronically available, but from a person’s invoking the power of the judiciary by submitting the document to the court for its consideration and action. The right of</p>	

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			<p>access springs into being the moment a person “undertake[s] to utilize the judicial process.” <i>Bank of Am. Nat’l Trust & Sav. Ass’n v. Hotel Rittenhouse Assocs.</i>, 800 F.2d 339, 344 (3d Cir. 1986). The fact that a litigant has requested judicial relief is an event that is properly open to public scrutiny. “By submitting pleadings and motions to the court for decision, one . . . exposes oneself [to] public scrutiny.” <i>Leucadia, Inc. v. Applied Extrusion Technologies, Inc.</i>, 998 F.2d 157, 164 (rd Cir. 1993) (quotation omitted) (emphasis added).</p> <p>Even short delays in access constitute “a total restraint on the public’s first amendment right of access even though the restraint is limited in time, and are unconstitutional unless the strict test for denying access has been satisfied.” <i>Associated Press v. U.S. District Court</i>, 705 F.2d 1143, 1147 (9th Cir.1983); accord, e.g., <i>Courthouse News Service v. Jackson, et al.</i>, 2009 WL 2163609, at *4 (S.D. Tex. July 20, 2009) (“the 24 to 72 hour delay in access is effectively a denial of access and is, therefore,</p>	

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			<p>unconstitutional”); <i>Grove Fresh Distribs., Inc. v. Everfresh Juice Co.</i>, 24 F.3d 893, 897 (7th Cir. 1994) (“[i]n light of values which the presumption is that once found to be appropriate, access should be immediate and contemporaneous”); <i>Globe Newspaper Co. v. Pokaski</i>, 868 F.2d 497, 507 (1st Cir. 1989) (“even a day or two delay impermissibly burdens the First Amendment”).</p> <p>Consistent timely access to the flow of new documents filed with a court is particularly important for the news media, which function as “surrogates for the public,” which today acquires information about court proceedings “chiefly through the print and electronic media.” <i>Richmond Newspapers, Inc. v. Virginia</i>, 448 U.S. 555, 572 (1980). Conversely, members of the public normally do not have the same consistent need to review the flow of new documents; rather, they more typically want to see documents in a single and often older file. For this reason, courts in California and</p>	

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			<p>nationwide have traditionally afforded members of the news media with special procedures to ensure they have timely access to new filings, such as creating a “press box” containing the day’s new case-initiating documents.</p> <p>The ability of news agencies to obtain prompt access to court records is even more important in today’s digital environment. With information being exchanged across the Internet at lightning speed, old news is not news at all; it is history. See, e.g., David Carr, “<i>Newsweek’s</i> Journalism of Fourth and Long,” <i>New York Times, Week in Review</i>, May 24, 2009, at I (present news environment is “a time when current events are produced and digested on a cycle that is measured with an egg timer, not a calendar); Eric Klinenberg, “News Production in a Digital Age,” 597 <i>Annals Am. Acad. Pol. & Soc. Sci.</i> 48, 54 (2005) (The advent of twenty-four-hour television news and the rapid emergence of instant Internet news sites have eliminated the temporal borders in the news day, creating an informational</p>	

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			<p>environment in which there is always breaking news to produce, consume, and—for reporters and their subjects—react against.”)</p> <p>In their current form, the Government Code sections that are the subject of the current amendments provide little guidance regarding public and media access to the electronic versions of court documents, except that electronic versions of court records shall be made “reasonably accessible to all members of the public for viewing and publication as would the paper records.” Gov. Code § 68150(k). Given its nationwide news reporting activities focusing on reporting on newly filed court documents, Courthouse News has experienced firsthand the effect that the conversion of court records into an electronic format has on the news media’s access to new filings and has found that access can be negatively affected in two ways.</p> <p>Access delays. Whereas the media has traditionally been afforded access to newly filed paper documents on the</p>	

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			<p>same day those documents are filed, when a court begins making its records available exclusively online, delays in access almost always follow. This is because the time necessary to complete the administrative tasks associated with making court documents available for electronic viewing means that an electronic copy is not available for days—or sometimes even weeks—after a document is filed.</p> <p>Review of court documents is more difficult. While a news reporter can review paper documents relatively quickly, the same documents are often more difficult and time-consuming to review in electronic form. Often this is due to technological reasons, for example, electronic “pages” that take significant time to load, or court documents that can only be downloaded one page at a time. In those cases where the news media is reviewing lengthy or multiple documents, this can prove to be incredibly time-consuming and is itself a barrier to access.</p>	

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			<p>Advances in technology are a wonderful thing, but they should not make it harder for news reporters to review and report on court records in a prompt and efficient manner. Courthouse News, therefore, seeks amendments to the Government Code that ensure the elimination of the paper record does not result in a deterioration of media access to new court documents, i.e., that members of the media have the opportunity to review newly filed court documents on the same day those documents are filed as has traditionally been the case with paper records and that electronic access be provided in a manner that allows the media to review lengthy or multiple court documents in an efficient manner comparable to paper records.</p> <p><u>Electronic Access Should Not Result in Excessive Fees</u></p> <p>Courthouse News' second concern relates to the permissible costs that courts may charge for access to records. Currently, Government Code § 68150(k)</p>	

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			<p>provides that "[r]easonable provision shall be made for duplicating the records at cost. Cost shall consist of all costs associated with duplicating the records as determined by the court." In Courthouse News' view, this is not sufficient to ensure that courts do not use the digitalization of the court record as a profit center, in effect financing court operations through fees for copies of court records that exceed the very small cost associated with providing a copy.</p> <p>By way of analogy, one can look to the Public Records Act, which provides that in most instances, the fee that may be charged for a copy of a public record may not exceed the "direct costs of duplication." Gov. Code § 6253(b). Even in those limited instances where an agency is permitted by Government Code § 6253.9 to charge a fee exceeding the direct costs of duplication for copies that are provided in an electronic format, those fees "may not include expenses associated with the [agency's] initial gathering of information, or with initial conversion of the information into an</p>	

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			<p>electronic format, or with maintaining the information.” 88 Ops. Cal. Att’y Gen. 153, 164 (2005); <i>see also North County Parents Organization v. Dept. of Ed.</i>, 23 Cal. App. 4th 144, 148 (1994) (“direct costs” of providing a copy do not include ancillary tasks necessarily associated with the “retrieval, inspection and handling of the file from which the copy is extracted”).</p> <p>In its current form, Government Code section 68150(k) could arguably be interpreted as permitting individual courts to levy fees designed to cover not just the cost of making a copy, but also the cost of converting those records into and maintaining them in an electronic format. As courts around the country have introduced electronic access programs, we have seen a troubling trend of many courts seeking to finance court operations by imposing fees for accessing court records that, while perhaps not onerous for those seeking a few individual records, can quickly add up and make obtaining copies of multiple court records cost prohibitive.</p>	

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			<p>This trend has an especially pronounced effect on the news media, which often accesses numerous documents each day in several courts. Courthouse News therefore respectfully suggests that Government Code be further amended to restrict costs associated with duplication of court records to only “direct costs,” i.e., the actual cost of copying the record, and not the costs associated with instituting and maintaining a court’s e-record system, or other “ancillary tasks.”</p>	
3.	<p>Disability Rights of California Stuart Seaborn Managing Attorney</p>	AM	<p>The Judicial Council should add a section paralleling the section 508 requirements for the accessibility of technology and electronic information. Although the extensive requirements of section 508 are limited to federal entities, the Judicial Council can use this opportunity to implement those provisions that allow for basic accessibility for individuals with visual impairments, e.g., that the electronic documents used be compatible with common screen-reading devices and that minimum font requirements be included.</p>	<p>This suggestion is beyond the scope of the present proposal. This proposal simply seeks to establish a foundation for the creation, maintenance, and preservation of court records in electronic form. It should be noted, however, that the creation, maintenance, and preservation of court records in electronic form will, in turn, open up greater opportunities to assist the visually impaired in obtaining access to records than is currently available in the paper environment. Furthermore, when the California Court Case Management System is implemented, it is designed to</p>

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			Such changes reflect the spirit of Government Code 11135 and will help provide increased accessibility to the courts for persons with visual impairments.	provide greater accessibility to records for individuals with visual impairments.
4.	Logan & Powell, LLP Shannon M. Quigley Legal Assistant	A	No specific comment.	No specific response required.
5.	Los Angeles County Court Reporters Association, Inc.	N	<p>The position of the Los Angeles County Court Reporters Association is to oppose this legislation unless it is amended to:</p> <ul style="list-style-type: none"> • Add court reporter transcripts as an exception under Government Code § 68150(b); and • Remove any mention of court reporter transcripts from the definition of a court record under Government Code § 68151(a)(2). <p>To include court reporter transcripts in these provisions is extremely premature. A statewide format for reporter transcripts, which vary from county to county, has not been implemented. In</p>	<p>See response to comment 1 above.</p> <p>The legislative proposal makes no changes in the current law relating to reporters’ transcripts. It expressly clarifies that the changes in section 68150 do not apply to reporters’ transcripts. (See amended</p>

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			<p>addition, it is well known to the Judicial Council and the State Legislature that the transcript fees for official reporters are now 20-plus years old.</p> <p>There are software issues to be addressed as well. Until all these issues have been discussed and resolved with the associations and the unions who represent the employees, the proposed language should not be introduced.</p> <p>Superior courts in California refer transcript requests to the court reporters. In addition, in some counties the terms of production of and charging for transcripts are part of a negotiated memorandum of understanding or contract. The proposed language would result in a reduction of fees for transcript production. As court reporters, any reduction in the amount paid for transcript production at this time is unacceptable. In addition, we seriously question whether the local trial courts are prepared to take on this task, particularly in the current budget environment.</p>	<p>section 68150(b.)</p> <p>It is unclear what proposed language is being referred to. None of the language changes the law relating to reporters' transcripts.</p> <p>The committees disagreed that the proposed legislation is premature. This</p>

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			<p>We are generally in support of moving to a paperless environment and electronic filing of documents, including the eventual electronic filing of court reporter transcripts. However, until extensive discussion regarding issues such as security, confidentiality, redaction of personal information, processing of sealed proceedings, methods for uploading, transcript fees, and standardized methodologies have been thoroughly vetted with the court reporter associations and the unions, the proposed legislation is premature on its face.</p> <p>LACCRA therefore objects to the language as proposed. We are willing to discuss this issue in detail and would suggest formation of a comprehensive committee to begin such a task and reach agreement on specifics.</p>	<p>legislation is very important and indeed necessary because it lays a foundation for the modernization of court records, thereby providing the opportunity to institute changes that can make the handling of court records much more efficient and economical. The issues relating to court reporters' transcripts are not meant to be addressed in this proposed legislation and should be considered separately on their merits in an appropriate time and manner.</p> <p>The committees agreed that discussions with the court reporters about their concerns is entirely appropriate.</p>
6.	Superior Court of Butte County Sharol H. Strickland	A	A small edit needs to be made on page 6, line 1 as follows:	

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	Executive Officer		“In accordance with the procedure under Section 68153.” Delete “unless it is.”	The committees did not agree with this suggestion because the two types of records specified in subdivision (h) are not to be destroyed under the procedures in section 68153, but rather preserved.
7.	Superior Court of Kern County Marc St. Laurent Assistant Court Supervisor	A	<p>I am in agreement with the proposed legislation. I find it very encouraging that this proposal will require the Judicial Council to establish the guidelines and standards for the creation and preservation of court records. This allows the guidelines to be tailored for California’s issues and not by some distant and antiquated organization that knows next to nothing about issues that are unique to California.</p> <p>This proposed legislation allows the court to have greater flexibility in utilizing new technologies that will benefit the court and our customers. It opens the doors to use these technologies to better maintain and manage the voluminous amounts of records housed in our court system.</p>	The commentator’s support for the proposal is noted.

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			I look forward to the further development of this legislation and the positive impact it will have on the Kern County Superior Court and the court system statewide.	
8.	Superior Court of Los Angeles County	A	No specific comment.	No specific response required.
9.	Superior Court of Sacramento County Robert Turner, ASO II Research & Evaluation Division	A	The Superior Court of California, County of Sacramento has reviewed the proposed legislation on the management of trial court records (LEG09-02) and supports the proposed statute amendments. If enacted, this excellent legislation could help trial courts statewide save millions of dollars in record retention, storage, and retrieval costs. Sacramento Superior Court has one additional comment to share regarding the text of the bill. One staff person noted: There is a lack of specific language to	The commentator’s support for the proposal is noted. The committees agreed that the statute should clarify that a court may have official records in more than one form, particularly during the period of transition

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			<p>address the official court file in one medium or an allowance for it to be in both media; paper and electronic. (An issue for [whether to scan] legacy files, which was a big deal for CCMS conversion.)</p> <p>It hints [that] . . . the official court record is paper in GC 68151(a)(1) where it says, “All 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.” But it would be good if the intent that the official court file should be in only one media or if multiple media were allowed was more clearly stated.</p>	to electronic records. Hence the first sentence of 68150(b) has been further revised to state “in any form <i>or forms</i> .”
10.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A	No additional comments.	No specific response required.
11.	Superior Court of Santa Clara County Robert Oyung	A	On behalf of the Superior Court of California, County of Santa Clara, we respectfully submit our feedback to the	The court’s support for the proposal is noted.

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	Chief Technology Officer		<p>proposed legislation for the Management of Trial Court Records.</p> <p>We feel that this proposed legislation is foundational to the work we need to do in order to modernize the creation, management, and archival of court documents.</p> <p>We have been hindered in the past by antiquated requirements for document preservation and records retention.</p> <p>The proposed legislation will provide us with much more flexibility and allow us to take full advantage of current and future technology to streamline our processes, reduce our physical storage requirements, and improve overall productivity by providing direct and on-demand access to court documents—first to judges and court employees, and later to the public.</p> <p>This is an excellent opportunity to help reshape the way the courts operate.</p>	

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12.	Superior Court of Solano County Lezlee Sheldon Case Records Manager	A	No specific comment.	No specific response required.
13.	Superior Court of Ventura County Michael D. Planet Executive Officer	A	No specific comment.	No specific response required.
14.	Superior Court of Alameda County Pat Sweeten Executive Officer	AM	I generally support this proposal but believe it is important to keep this subject separate from the question of whether trial courts statewide will be required to use the same case management software. The focus should center on trial court operational and economic benefits, and improvements in service to the public, derived from the use of official electronic records. Therefore, I recommend adding a provision (possibly in subdivision (c)): The standards or guidelines for court records should enable trial courts to use and experiment with any particular electronic record system or electronic case management system which meets	The committees regarded the question of modernizing court records as separate from issues relating to any particular case management systems and did not recommend including the new provision suggested by the commentator.

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			minimum requirements for court record creation, maintenance, reproduction, and preservation.	