



## Judicial Council of California · Administrative Office of the Courts

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 29, 2010

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Title	Agenda Item Type
Court Administration: The Modernization of Trial Court Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Adopt Cal. Rules of Court, rules 10.850 and 10.854; amend rule 10.855; and repeal Cal. Stds. Jud. Admin., std. 10.80	January 1, 2011
Recommended by	Date of Memorandum
Court Executives Advisory Committee Mr. Michael M. Roddy, Chair	October 12, 2010
Court Technology Advisory Committee Hon. Ming W. Chin, Chair	Contact
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### Executive Summary

The Court Executives Advisory Committee (CEAC) and the Court Technology Advisory Committee (CTAC) recommend that the Judicial Council adopt a rule requiring the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, to prepare, maintain, and distribute to the trial courts a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records, consistent with the Government Code and the rules of court and policies adopted by the Judicial Council. The *Trial Court Records Manual* will assist the courts and the public to have complete, accurate, efficient, and accessible court records. This rule proposal is part of a broader undertaking to modernize California law regarding trial court records. It is a companion to the legislation that

will become effective January 1, 2011 to modernize the creation, maintenance, and preservation of trial court records.<sup>1</sup>

## **Recommendation**

The Court Executives Advisory Committee and the Court Technology Advisory Committee recommend that the Judicial Council, effective January 1, 2011:

1. Adopt rules 10.850 and 10.854 of the California Rules of Court;
2. Amend rule 10.855; and
3. Repeal standard 10.80 of the California Standards of Judicial Administration.

The text of the new and amended rules and the repealed standard are attached at pages 10–11.

## **Previous Judicial Council Action**

In 2009, the Judicial Council approved sponsoring legislation to modernize court records.<sup>2</sup> The Court Executives and Court Technology Advisory Committees recommended earlier this year that this rules proposal to implement the legislation be circulated for public comment.<sup>3</sup> The Judicial Council's Rules and Projects Committee approved the circulation of the proposal in the spring of 2010.

## **Rationale for Recommendation**

### **Background**

Court records<sup>4</sup> have historically been maintained in paper form. In California, a vast amount of storage space is currently devoted to paper files of court records. In 2007, a survey indicated that court records were stored in at least 276 locations throughout the state (courthouses and off-site facilities) and totaled 1,854,992 linear feet.<sup>5</sup> The total reported cost associated with records management during fiscal year 2005–2006 was \$21,619,815. Annual storage costs totaled \$1,814,530. Staff costs to create and maintain these records for this same period totaled \$14,908,919. Two-thirds of the courts retrieve records every day from remote locations; on

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<sup>1</sup> The legislation, Assembly Bill 1926 (Evans), has been signed by the Governor and chaptered. The text of the bill may be viewed at [www.leginfo.ca.gov/pub/09-10/bill/asm/ab\\_1901-1950/ab\\_1926\\_bill\\_20100823\\_chaptered.pdf](http://www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1901-1950/ab_1926_bill_20100823_chaptered.pdf).

<sup>2</sup> See the Judicial Council report at [www.courtinfo.ca.gov/jc/documents/reports/121509item2.pdf](http://www.courtinfo.ca.gov/jc/documents/reports/121509item2.pdf).

<sup>3</sup> In developing this proposal, the advisory committees were assisted by the CEAC Working Group on Records Management, chaired by Court Executive Officer Kim Turner, and the CTAC Rules Subcommittee, chaired by Justice Terence L. Bruiniers.

<sup>4</sup> This proposal relates to trial court records as distinguished from administrative records of the trial courts. Court records are records filed, lodged, or maintained in connection with a case. (See Gov. Code, § 68151; see also proposed rule 10.850.)

<sup>5</sup> Forty-nine of the 58 superior courts responded to the survey.

average, they travel 15 miles to do so. Thus, court records in paper form are expensive to create, maintain, access, and preserve.

Government Code section 68150, the principal statute on the management of trial court records, 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 adopted by the American National Standards Institute or the Association for Information and Image Management. However, no such standards or guidelines for the preservation and reproduction of documents in electronic form have been adopted.

With the increasing availability of electronic document management systems, the courts have an opportunity to realize significant long-term savings if they can convert from paper to electronic records. Authorizing courts to create, maintain, and preserve records in electronic forms is practical and economical.

### **The legislation**

Statutory changes are needed in order 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, Government Code section 68150 provides that electronic records reproduced under specific standards may be deemed the original court record. (See Gov. Code, § 68150(c).) Additional changes are necessary to fully realize the possibilities afforded by electronic records management and ever-changing technology and business practices.

At the recommendation of the Court Executives and Court Technology Advisory Committees, the Judicial Council in December 2009 agreed to sponsor legislation to address this issue. The council-sponsored legislation, Assembly Bill 1926 (Evans), was enacted earlier this year and approved by the Governor on August 23, 2010. It will become effective on January 1, 2011. The legislation modernizes the law on the creation, maintenance, and preservation of court records. It amends Government Code section 68150 on trial court records and thus affords the trial courts the opportunity to capitalize on the emerging records and document management technologies that are considered best practices in the records management industry. Specifically, the legislation adds the words “created” and “maintained” before “preserved.” This change makes it clear that courts can not only preserve, but also create and maintain, records in electronic form.

In addition, under the legislation, the statutory requirement to adhere to standards or guidelines adopted by national organizations has been eliminated because the organizations identified in the statute had not adopted specific standards for certain mediums or the permanent preservation of documents in electronic form. Instead of requiring records to comply with guidelines or standards adopted by national organizations, a new provision in section 68150 requires the

Judicial Council to adopt rules to establish standards or guidelines for the creation, maintenance, reproduction, and preservation of court records.<sup>6</sup>

This legislation is more practical and flexible than the current court records statutes. The amended statute will 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.

### **This rules proposal**

This proposal recommends the adoption of a rule of court to implement the legislation modernizing court records. Specifically, proposed rule 10.854 would require the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, to prepare, maintain, and distribute a manual providing standards or guidelines for the creation, maintenance, and retention of trial court records, consistent with the Government Code and the rules of court and policies adopted by the Judicial Council. The manual will assist the courts and the public to have complete, accurate, efficient, and accessible court records.

Proposed rule 10.854 provides that before the manual is issued it must be made available for comment from the trial courts. (Cal. Rules of Court, proposed rule 10.854(a).) The manual has already been circulated for public comment.<sup>7</sup> The manual will be periodically updated to reflect changes in technology that affect the creation, maintenance, use, and retention of court records. Except for technical changes, corrections, or minor substantive changes not likely to create controversy, proposed changes in the manual will be made available for comment from the trial courts before the manual is updated or changed. Courts must be notified of any changes in the standards or guidelines, including all those relating to the permanent retention of records. (See proposed rule 10.854(c).)

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<sup>6</sup> Assem. Bill 1926, as amended April 6, 2010, provides, in part:

The Judicial Council shall adopt rules to establish the standards or guidelines for the creation, maintenance, reproduction, or preservation of court records, including records that must be preserved permanently. The standards or guidelines shall reflect industry standards for each medium used, if those standards exist. The standards or guidelines shall ensure that court records are created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance. They shall also ensure that the records are stored and preserved in a manner that will protect them against loss and ensure preservation for the required period of time. Standards and guidelines for the electronic creation, maintenance, and preservation of court records shall ensure that the public can access and reproduce records with at least the same amount of convenience as paper records previously provided. (Assem. Bill 1926, sec. 1.)

<sup>7</sup> A draft of the manual was circulated in August and September 2010. The invitation to comment, which includes a copy of the manual, is available at [www.courtinfo.ca.gov/invitationstocomment/documents/sp10-02.pdf](http://www.courtinfo.ca.gov/invitationstocomment/documents/sp10-02.pdf).

New rule 10.854 states that the *Trial Court Records Manual* must provide standards or guidelines for the creation, maintenance, and retention of trial court records. These standards or guidelines will ensure that all court records subject to permanent retention are retained and made available to the public in perpetuity as legally required. (Proposed rule 10.854(b).)

The rule, reflecting the legislation, will require the trial courts to adhere to the standards and guidelines in the manual, except as otherwise provided. (Proposed rule 10.854(d).) The standards and guidelines will implement the intent of the legislation that court records shall be “created and maintained in a manner that ensures accuracy and preserves the integrity of the records throughout their maintenance.”<sup>8</sup> The standards and guidelines will also “ensure that the records are stored and preserved in a manner that will protect them against loss and ensure preservation for the required period of time.”<sup>9</sup>

Courts will benefit significantly from having a comprehensive reference manual that highlights proven technologies and offers sample policies and procedures that can assist them to meet the challenges of effectively managing a huge volume of court records. It is important to note, however, that the manual does not mandate a timeline for the adoption of any practices. It does not impose any specific requirements or burdens on trial courts to adopt new practices immediately or without regard to a particular trial court’s ability to implement new practices. Thus, the rule and the manual do not require any trial court to use new technologies or modify current practices. The practices identified in the manual are intended to reflect less costly ways of managing records or alternative methods and best industry practices, where applicable, for records management.

Current rule 10.855, on the superior court sampling program, would also be modified. It would be amended to provide that court records that are part of the comprehensive sample filed after 1910, the systematic sample, and the subjective sample referenced in rule 10.855 must be retained permanently in accord with the requirements of the *Trial Court Records Manual*.

Finally, this proposal would repeal standard 10.80 of the California Standards of Judicial Administration, which was adopted in 1993. Standard 10.80 and the court records management standards that it refers to have become obsolete. They would be replaced by the amended statutes on court records and the new and amended rules in this proposal.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments and alternatives considered**

This proposal was circulated for public comment in the spring 2010 comment cycle. Seven comments were received on this proposal. The commentators included three superior courts, a

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<sup>8</sup> Assem. Bill 1926, sec.1; amended Gov. Code, § 68150(c).

<sup>9</sup> *Id.*

judge, a management analyst, a local bar association, and the Joint Rules Working Group of the Trial Court Presiding Judges and the Court Executives Advisory Committees.<sup>10</sup> The comments on the rules were mostly favorable. Four commentators agreed with the proposal, two agreed with it if modified or with reservations, and one did not indicate a position.

A superior court and a local bar association supported the proposal, without any specific comments. (See comments 3 and 4.) Specific comments and suggestions were provided by the others. For instance, a judge recommended that the court records manual should include not only aspects of records creation, maintenance, and preservation but also include the statutes and rules on the destruction of records. (Comment 2.) The manual, as drafted and circulated, contains that information.

A superior court stated that it not only supported the proposed changes but thought that they are critically essential to enable the modernization of the court's records management and information management processes. (Comment 5.) The court stated: "We feel that the proposed changes are foundational to the work we need to do in order to modernize the creation, management, and archival of Court documents. We have been hindered in the past by antiquated requirements for document preservation and records retention. The proposed changes 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. . . . This is an excellent opportunity to help reshape the way the Courts operate."

The court noted that it has in excess of 40,000 square foot of floor space dedicated to the storage of court records. It added: "Storage, access, and maintenance of these records are cumbersome and costly. It is essential that the proposed changes be adopted in order to facilitate the reduction of physical storage space, enable quick and efficient records access to court staff and the public, and provide flexibility in adopting new technologies to better manage our court records."

A court analyst indicated that it would be helpful if the Administrative Office of the Courts developed a procedure on the retention of files for all courts to be consistent. (Comment 1.) Although the manual as drafted does not present a formal, standardized procedure on the retention of files, it provides references to the applicable statutes and rules on records retention. The manual contains a schedule for the retention and destruction of records. It includes links to forms to be used in the records destruction process. And it provides guidance on the process of retaining and destroying records, including security and recycling considerations. Hence, the manual is designed to be helpful to the courts on matters regarding records retention.

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<sup>10</sup> A chart summarizing the comments and the committees' responses is attached at the end of this report.

A court executive officer objected to the proposed rule of court to the extent that it would require trial courts to adhere to requirements contained in the manual. He stated that he favors a manual that recommends best practices for trial courts to utilize for records retention. He was concerned about the burdens any new requirements would impose on court resources. (Comment 6.) The advisory committees disagreed with this comment. The *Trial Court Records Manual* is being developed by court administrators for court administrators, to assist all the trial courts to better and more effectively handle their official records. The manual is particularly needed at this time to help courts as they gradually make the transition from paper to electronic records. It provides guidance to the courts on the methods and best practices to facilitate the transition. It is designed to give the courts the information that they need as they become ready to make the transition to electronic records.

The manual includes suggestions and guidelines. These apply to both paper and electronic records, as it is recognized that many courts will continue to maintain paper files for a number of years. It is true that proposed rule 10.854 also provides that trial courts “must adhere to the requirements contained in the *Trial Court Records Manual*, except as otherwise provided in the manual.” (Proposed rule 10.854(d).) Parts of the manual contain provisions to which courts must adhere. For example, the manual provides references to statutes and rules relating to records with which courts must comply, such as the laws prescribing the length of retention of different types of records and the confidential treatment of certain types of records. Also, to implement the new legislation authorizing the more extensive use of electronic court records, the manual will provide standards and guidelines for the creation, maintenance, reproduction, and preservation of court records in electronic form. This will permit, but not require, courts to modernize their records management processes in an effective manner. The manual contains no mandates to adopt any new records practices by any particular deadlines.

The court executives who have been developing the manual are acutely aware of the current fiscal challenges faced by the courts. They do not think that the rules and manual will impose unrealistic burdens on court staff; rather, they are convinced that the rules and manual will give many courts the opportunity to modernize their records, allowing them to operate in a more cost-effective manner. As discussed above, maintaining paper records is an expensive and labor-intensive activity. To the extent that courts’ costs can be reduced by changing to electronic records and more efficient procedures and practices, courts may realize significant economic benefits. Moreover, presently there is no central repository for the numerous statutes, rules, and other mandates that authorize the management of court records. These requirements are contained in many sections of California law and in several rules of court. The manual seeks to centralize these requirements in one resource guide so that courts can more easily comply with mandates. (For a further discussion of the impacts of this proposal, see the section titled “Implementation Requirements, Costs, and Operational Impacts” below.)

A final group that provided comments was the Joint Working Group on Rules of the Trial Court Presiding Judges and Court Executives Advisory Committees, which provided detailed remarks particularly regarding the impacts of the proposed rule. (See comment 7.) The group’s impact

analysis is discussed in the section below on implementation requirements, costs, and operational impacts.

### **Policy implications**

An important feature of this rules proposal and the related legislation is that they will increase the ability of the judicial branch to independently develop policies and practices to modernize court records. The rules and legislation will permit courts to modernize their records and the technical standards to be constantly updated, without requiring further statutory or rule changes. The proposals will promote the modernization of court records, thereby affording opportunities for courts to realize substantial savings while increasing public access to court records.

### **Implementation Requirements, Costs, and Operational Impacts**

The Joint Working Group on Rules of the Trial Court Presiding Judges and Court Executives Advisory Committees provided extensive comments on the impacts of this proposal on the courts. The impacts of the proposal are generally quite positive. (See comment 7.) Some highlights of the impact analysis are:

- With the increasing availability of electronic document management systems, the proposal, through the implementation of the trial court records management manual, will allow the courts an opportunity and option to realize significant long-term savings if they can convert from paper to electronic records. Although there may be some initial investment in technological infrastructure, the ongoing savings would recoup such expenditures quickly and allow for large amounts of ongoing savings.
- The policies and procedures recommended by the manual will streamline the records management process and workflow, thereby increasing efficiency and decreasing demands on financial resources.
- The proposal, a companion to pending legislation to modernize the creation, maintenance, and preservation of trial court records, will not require the courts to create electronic records. It is understood that this proposal does not rise to the level of a mandate and, as a result, no unnecessary demands would be placed on the courts. The manual will provide assistance in the formulation of policy while providing sufficient flexibility to allow the courts to implement the policy in accordance with their needs and as resources and local capabilities allow.
- The manual will be developed to be consistent with the California Court Case Management System (CCMS) V4 phase design. This will include adopted statewide standards for case numbering, e-filing, hierarchical case taxonomy (index structure), restrictions on access to trial court records, records retention/destruction rules, long-term document storage file formats, technical design for integration with court case document management, and technical architecture for secure public access portals and kiosks. The

manual should further assist the courts with their CCMS V4 phase implementation, providing useful guidelines, standards, and best practices for the transition.<sup>11</sup>

- If a court is currently not creating and maintaining electronic records but is interested in transitioning from paper to electronic court records management, training will be available for court staff to bring them up to speed on electronic records creation and maintenance. The court will be able to either design a local training program, with the assistance of the trial court records management manual, that will highlight proven technologies and policies and procedures or be assisted by AOC staff or staff of other trial courts involved with records management.
- The proposal should have a positive impact with local or statewide justice partners when it comes to the sharing of court records and providing access to them in a timely and efficient manner.
- Except for technical changes, corrections, or minor substantive changes not likely to create controversy, proposed changes in the manual must be made available for comment from the trial courts before the manual is updated or changed. This will allow court executive officers to contribute to the development of the guidelines and enable the local courts to query their subject matter experts to determine the viability of the proposed guidelines and make recommendations accordingly.

### **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal furthers the goal of modernization of management and administration (Goal III). It also advances the goal of providing branchwide infrastructure for service excellence (Goal VI) (see Objective 4, Desired Outcomes b (new statutes and rules of court to support increased electronic archiving of court records)).

### **Attachments**

1. Cal. Rules of Court, rules 10.850, 10.854, and 10.855; and Cal. Stds. Jud. Admin., std. 10.80, at pages 10–11
2. Chart of comments, at pages 12–22

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<sup>11</sup> For courts that are not yet implementing CCMS, the specific information in the manual about CCMS design will help them plan for the future in a consistent manner.



Rules 10.850 and 10.854 of the California Rules of Court are adopted, rule 10.855 is amended, and standard 10.80 of the California Standards of Judicial Administration is repealed, effective January 1, 2011, to read as follows:

1 **Rule 10.850. Trial court records**

2  
3 Unless otherwise provided, “court records” as used in this chapter consist of the records as  
4 defined in Government Code section 68151(a).

5  
6 **Rule 10.854. Standards and guidelines for trial court records**

7  
8 **(a) The standards and guidelines**

9  
10 The Administrative Office of the Courts, in collaboration with trial court presiding judges  
11 and court executives, must prepare, maintain, and distribute a manual providing standards  
12 and guidelines for the creation, maintenance, and retention of trial court records (the *Trial*  
13 *Court Records Manual*), consistent with the Government Code and the rules of court and  
14 policies adopted by the Judicial Council. The manual should assist the courts and the  
15 public to have complete, accurate, efficient, and accessible court records. Before the  
16 manual is issued, it must be made available for comment from the trial courts.

17  
18 **(b) Contents of the *Trial Court Records Manual***

19  
20 The *Trial Court Records Manual* must provide standards and guidelines for the creation,  
21 maintenance, and retention of trial court records. These standards and guidelines must  
22 ensure that all court records subject to permanent retention are retained and made available  
23 to the public in perpetuity as legally required.

24  
25 **(c) Updating the manual**

26  
27 The Administrative Office of the Courts, in collaboration with trial court presiding judges  
28 and court executives, must periodically update the *Trial Court Records Manual* to reflect  
29 changes in technology that affect the creation, maintenance, and retention of court records.  
30 Except for technical changes, corrections, or minor substantive changes not likely to create  
31 controversy, proposed changes in the manual must be made available for comment from  
32 the courts before the manual is updated or changed. Courts must be notified of any changes  
33 in the standards or guidelines, including all those relating to the permanent retention of  
34 records.

35  
36 **(d) Adherence to standards and guidelines**

37  
38 Trial courts must adhere to the requirements contained in the *Trial Court Records Manual*,  
39 except as otherwise provided in the manual.

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

3  
4 **(a)–(g) \*\*\***

5  
6 **(h) Preservation medium**

7  
8 (1) Comprehensive court records under (c) filed before 1911 must be preserved in their  
9 original paper form unless the paper is not available.

10  
11 (2) ~~If practicable, courts should preserve paper records filed after January 1, 1911,~~  
12 ~~because they are preferred by historians and researchers. Courts may, however,~~  
13 ~~reproduce such paper records on microfilm or other electronic or micrographic~~  
14 ~~media, if the records are maintained and reproduced in accordance with archival~~  
15 ~~standards recommended by the American National Standards Institute or the~~  
16 ~~Association for Information and Image Management and the condition of the paper~~  
17 ~~records permits reproduction without damage to the originals. [NOTE: As of the~~  
18 ~~effective date of this rule, optical disk storage is not recognized as an archival~~  
19 ~~medium, although it may become so with advances in technology.] Court records~~  
20 ~~that are part of the comprehensive sample filed after 1910, the systematic sample,~~  
21 ~~and the subjective sample must be retained permanently in accord with the~~  
22 ~~requirements of the *Trial Court Records Manual*.~~

23  
24 **(i)–(l) \*\*\***

25  
26  
27 **Standard 10.80. Court records management standards**

28  
29 ~~Each court should develop records management practices consistent with the standards approved~~  
30 ~~by the Judicial Council. The approved standards are specified in Judicial Council Court Records~~  
31 ~~Management Standards, published by the Administrative Office of the Courts.~~

32  
33 ~~Implementation of these standards, which cover creation, use, maintenance, and destruction of~~  
34 ~~records, should lead to more efficient court administration, better protection and preservation of~~  
35 ~~records, and improved public access to records.~~

### SPR10-38

#### **Court Administration: The Modernization of Trial Court Records** (adopt Cal. Rules of Court, rule 10.850, and 10.854; revise rule 10.855; and repeal Standards of Jud. Adm., section 10.80)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committees' Response</b>
1.	Debra Brasher Management Analyst Superior Court of Stanislaus County	NI	My only comment is the section that AOC will develop a procedure on the retention of files for all courts to be consistent is very good (SPR 10-38). That will be helpful to us.	Although the manual does not present a formal, standardized procedure on the retention of files, it provides references to the applicable statutes and rules on records retention. The manual contains a schedule for the retention and destruction of records. It includes link to forms to be used in the records destruction process. And it provides guidance on the process of retaining and destroying records, including security and recycling considerations. Hence, the manual is designed to be helpful to the courts on records retention matters.
2.	Hon. Douglas M. Elwell Judge of the Superior Court of San Bernardino County	AM	Agree with proposed changes if modified. Will the proposed records manual also include destruction of records? It would be beneficial to the courts to include not only aspects of record creation, maintenance and preservation, but to also include the statutes and rules regarding destruction of records (e.g. Ca. Rules of Court 10.856 and Gov. Code sections 68150-68153). A comprehensive records manual would be very useful to court staff and the public.	The manual is quite comprehensive. It contains guidance on the destruction of records, including statutory references and forms.
3.	Orange County Bar Association Newport Beach By Lei Lei Wang Ekvall, President	A	No specific comment.	No specific response required.

**SPR10-38****Court Administration: The Modernization of Trial Court Records** (adopt Cal. Rules of Court, rule 10.850, and 10.854; revise rule 10.855; and repeal Standards of Jud. Adm., section 10.80)

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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committees' Response</b>
4.	Superior Court of San Diego County San Diego By Michael M. Roddy, Court Executive Officer	A	No specific comment.	No specific response required.
5.	Superior Court of Santa Clara County By David H. Yamasaki Court Executive Officer	A	<p>We feel that the proposed changes are foundational to the work we need to do in order to modernize the creation, management, and archival of Court documents. We have been hindered in the past by antiquated requirements for document preservation and records retention.</p> <p>The proposed changes 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> <p>The Superior Court of California, County of Santa Clara not only strongly supports the proposed changes but feels that the changes are critically essential to enable the modernization of the Court's records management and information management</p>	The committees agreed that the legislation, rule, and manual are foundational work needed to modernize the creation, management, and archiving of court records.

**SPR10-38****Court Administration: The Modernization of Trial Court Records** (adopt Cal. Rules of Court, rule 10.850, and 10.854; revise rule 10.855; and repeal Standards of Jud. Adm., section 10.80)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committees' Response</b>
			<p>processes. Our court has in excess of 40,000 sq. ft. of floorspace which is dedicated to the storage of court records. Storage, access, and maintenance of these records are cumbersome and costly.</p> <p>It is essential that the proposed changes be adopted in order to facilitate the reduction of physical storage space, enable quick and efficient records access to court staff and the public, and provide flexibility in adopting new technologies to better manage our court records.</p> <p><b>Clarification</b> In Rule 10.855 “Superior Court Records Retention Program” (h) “Preservation medium”, we recommend that the dates be clarified to avoid any misunderstanding. In particular:</p> <ul style="list-style-type: none"> <li>• “filed before 1911” should be replaced with “filed before January 1, 1911”</li> <li>• “filed after 1910” should be replaced with “filed after December 31, 1910”</li> </ul> <p>We recommend that all instances of “Standards or Guidelines” be changed to “Standards and Guidelines.”</p> <p><b>Concern</b></p>	<p><b>Clarification</b> The suggested changes would provide a little greater clarity; however, the committees did not think the changes are necessary and might possibly be confusing. The language in subdivision (h)-- of “filed before 1911” and “filed after 1910”—refers back to subdivision (c)(11)-(2). It seems better to use consistent language in both subdivisions of rule 10.855.</p> <p>The rule has been changed to refer to “standards and guidelines.”</p> <p><b>Response to Concern</b></p>

**SPR10-38**

**Court Administration: The Modernization of Trial Court Records** (adopt Cal. Rules of Court, rule 10.850, and 10.854; revise rule 10.855; and repeal Standards of Jud. Adm., section 10.80)

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

	Commentator	Position	Comment	Committees' Response
			<p>Our main concern centers around the lack of clarity regarding the time required for the Superior Courts to comply with the requirements documented in the <i>Trial Court Records Manual</i>.</p> <p>The proposal for Rule 10.854 “Standards or Guidelines for Trial Court Records” includes the following statements:</p> <p>(c) Manual to be Updated</p> <ul style="list-style-type: none"> <li>• “The <i>Trial Court Records Manual</i> must be periodically updated ... “</li> <li>• “Courts must be notified of any changes ...”</li> </ul> <p>(d) Adherence to Standards or Guidelines</p> <ul style="list-style-type: none"> <li>• “Superior courts must adhere to the requirements ... “</li> </ul> <p>These statements do not specify the amount of time a court has for the implementation of any changes made to the <i>Trial Court Records Manual</i> so that a court can be compliant with the requirements.</p> <p>We understand that any changes to the <i>Trial Court Records Manual</i> could vary in degree of complexity and therefore it would not be feasible to publish a specific timeframe for the required implementation of all changes (e.g. all changes must be implemented within 6</p>	<p>It is not necessary or desirable to provide greater specificity regarding timing because, as the commentator notes, “any changes to the <i>Trial Court Records Manual</i> could vary in degree of complexity and therefore it would not be feasible to publish a specific timeframe for the required implementation of all changes (e.g. all changes must be implemented within 6 months). . . . Furthermore, the specific business environment at each individual Superior Court is unique. Therefore, the time required to implement a specific change will vary from court to court.”</p>

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**Court Administration: The Modernization of Trial Court Records** (adopt Cal. Rules of Court, rule 10.850, and 10.854; revise rule 10.855; and repeal Standards of Jud. Adm., section 10.80)

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	Commentator	Position	Comment	Committees' Response
			<p>months).</p> <p>Furthermore, the specific business environment at each individual Superior Court is unique. Therefore, the time required to implement a specific change will vary from court to court.</p> <p><b>Recommendation</b></p> <ol style="list-style-type: none"> <li>1. We recommend that Rule 10.854 "Standards or Guidelines for Trial Court Records" be published as proposed.</li> <li>2. The <i>Trial Court Records Manual</i> should allow for a broad range of solutions which include currently deployed tools and methods in order to avoid the difficulties and requirement for courts to retrofit their environments in order to become compliant with the new standards and guidelines.</li> <li>3. If specific deadlines for compliance must be set, then:               <ol style="list-style-type: none"> <li>a. Careful analysis must be made in the creation of the <i>Trial Court Records Manual</i> to take into consideration realistic implementation timeframes and requirements.</li> <li>b. Any required implementation timelines must involve discussions with the Courts to ensure feasibility.</li> </ol> </li> </ol>	<p><b>Response to Recommendation</b></p> <ol style="list-style-type: none"> <li>1. The support for the rule is noted.</li> <li>2. The committees agreed that the manual should allow for a broad range of solutions, as suggested.</li> <li>3. The manual being developed does not contain specific deadlines for compliance.</li> </ol>

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6.	Superior Court of Yolo County By James B. Perry Court Executive Officer	AM	<p>The court objects to proposed Rule of Court 10.854 to the extent it requires trial courts to adhere to requirements contained in an eventual Trial Court Records Manual. Instead, we favor a manual which recommends best practices for trial courts to utilize for records retention. If rules regarding records retention are adopted as requirements, then the Court suggests a delayed effective date for any rules imposing additional burdens.</p> <p>Depending on the guidelines and standards adopted in such a manual, the court is concerned about the burdens any new requirements would impose on court resources during these challenging budgetary times. Trial courts are already hard-pressed to comply with statutory provisions regarding the retention/destruction of court records. Any new requirements should be carefully evaluated to ensure that they do not impose unrealistic burdens on court staff.</p>	<p>The committees disagreed with this comment. The <i>Trial Court Records Manual</i> is being developed by court administrators for court administrators, to assist all the trial courts to better and more effectively handle their official records. The manual is particularly needed at this time to help courts as they gradually make the transition from paper to electronic records. The manual provides guidance to the courts on the methods and best practices to facilitate the transition. It is designed to give the courts the information that they need, as they become ready to make the transition to electronic records.</p> <p>The manual includes suggestions, guidelines, and standards. These apply to both paper and electronic records, as it is recognized that many courts will continue to be maintaining paper files for a number of years to come. It is true that new rule 10.850 provides that trial courts “must adhere to the requirements contained in the <i>Trial Court Records Manual</i>, except as otherwise provided in the manual” (rule 10.850(d)). There are parts of the manual containing provisions to which courts must adhere. For example, the manual provides references to statutes and rules relating to records that courts must comply--for example, the laws prescribing the length of retention of different types of records and the treatment of certain records as confidential. Also, to implement the new legislation authorizing the more extensive use of electronic</p>

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				<p>court records, the manual will provide standards and guidelines for the creation, maintenance, reproduction, and preservation of court records in electronic form. This will permit, but not require, courts to modernize their records management processes in an effective manner. The manual contains no mandates to adopt any new records practices by any particular deadlines.</p> <p>The court executives who have been developing the manual are acutely aware of the current fiscal challenges faced by the courts. They do not think that the rule and manual will impose unrealistic burdens on court staff; rather they are convinced that the rule and the manual will give many courts the opportunity to modernize their records, allowing them to operate in a more cost effective manner. Maintaining paper records is an expensive and labor intensive activity. To the extent courts' costs can be reduced by changing to electronic records and more efficient procedures and practices, courts may realize significant economic benefits.</p>
7.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and Court Executives Advisory Committee (CEAC) Joint Working Group on Rules	A	<p>TCPJAC/CEAC Joint Rules Working Group Comment:</p> <p>Agree, with understanding that there are no additional requirements imposed on the trial courts than what is already required by law.</p>	

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			<p>Operational impacts identified by working group:</p> <p>In a 2007 CEAC Working Group on Records Management sponsored statewide survey, with 49 of the 58 trial courts responding, responses indicated that court records were stored in at least 276 locations throughout the state (courthouses and off-site facilities). The total reported cost associated with records management during fiscal year 2005–2006 was \$21,619,815 and annual storage costs totaled \$1,814,530. Staff costs to create and maintain these records for this same period totaled \$14,908,919. Two-thirds of the courts who responded to the survey stated that they had to physically retrieve records every day and on the average travel 15 miles to do so. Thus, court records in paper form can be costly (and probably more costly today than the costs reported in 2007) to create, maintain, access, and preserve.</p> <p>With the increasing availability of electronic document management system, the proposal, through the implementation of the trial court records management manual, will allow the courts an opportunity and option to realize significant long-term savings if they can convert from paper to electronic records. Although there may be some initial investment</p>	<p>The committees agreed with this analysis of operation impacts and have included highlights from this comment in the report.</p>

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			<p>in technological infrastructure, the ongoing savings would recoup such expenditures quickly and allow for large amounts of ongoing savings. Furthermore, the recommended policies and procedures recommended by the manual will streamline the records management process and workflow also increasing efficiency and decreasing demands on financial resources.</p> <p>The proposal, a companion to pending legislation (AB 1926) to modernize the creation, maintenance, and preservation of trial court records, will not require the courts to create electronic records. It is understood that this proposal does not rise to the level of a mandate and, as a result, there would be no unnecessary demands placed on the courts. The manual will provide assistance in the formulation of policy while providing sufficient flexibility to allow courts to implement in accordance with their needs, and as resources and local capabilities allow.</p> <p>The proposed manual will be developed to be consistent with the CCMS V4 phase design. This will include adopted statewide standards for case numbering, e-filing (e.g. to meet increase demand of e-filing of court cases), hierarchical case taxonomy (index structure), records retention /destruction rules, long-term document storage file formats, technical</p>	

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			<p>design for integration with court case document management, and technical architecture for secure public access portals and kiosks. The manual will further assist the courts with their CCMS V4 phase implementation providing useful guidelines, standards and best practices.</p> <p>Courts who have implemented document management technologies have found some initial training necessary. If a court is currently not creating and maintaining electronic records but is interested in transitioning from paper to electronic court records management, training will be required for court staff to bring them up to speed on electronic records creation and maintenance. The courts will be able to either design a local training program, with the assistance of the trial court records management manual that will highlight proven technologies and policies and procedures, or be assisted by AOC staff involved with the rule proposal.</p> <p>The proposal should have a positive impact with local or statewide justice partners when it comes to the sharing of court records and providing them in a timely and efficient manner.</p> <p>Except for technical changes, corrections, or minor substantive changes not likely to create</p>	

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			<p>controversy, proposed changes in the manual must be made available for comment from the trial courts before the manual is updated or changed. This will allow court executive officers to contribute to the development of the guidelines and enable the local courts to query their subject matter experts to determine the viability of the proposed guidelines and make recommendations accordingly.</p> <p>Document management systems technology has opened up multiple avenues of communicating case information and documents to justice system partners in a more expedited and efficient manner than previously possible.</p>	