

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

**W16-16**

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Title	Action Requested
Court Records: Records Sampling and Destruction	Review and submit comments by January 22, 2016
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855	July 1, 2016
Proposed by	Contact
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### **Executive Summary and Origin**

The Court Executives Advisory Committee (CEAC) proposes amending the rule relating to the sampling of court records to substantially reduce the number of records that superior courts are required to keep, thus reducing court costs, while still ensuring that courts preserve a statistically significant sample of court records for future research purposes. The committee also proposes amending the statute regarding the destruction of court records to eliminate the requirement that superior courts must report destroyed court records to the Judicial Council. This burdensome requirement is unnecessary because the courts are required to keep records locally of any destruction.

### **Background**

Before the enactment of Assembly Bill 796 in 1989, all court records had to be microfilmed before they could be destroyed. To reduce the high annual costs of storage and microfilming, the County Clerks Association and the Association of Municipal Clerks cosponsored AB 796. As introduced, AB 796 would have allowed for the destruction of all court records after their retention periods expired. As finally enacted, AB 796 included former section 69503(e) of the Government Code, which provided that superior courts must keep “a scientifically valid sample of cases” in order “to preserve judicial records of historical or other research interest.” AB 796 also directed the Judicial Council to develop a plan for implementing sampling statewide. The

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 These proposals are circulated for comment purposes only.*

Judicial Council adopted a rule to that effect in 1992. Although this rule has since been amended and renumbered as rule 10.855, it remains substantially the same today.<sup>1</sup>

In 1994, the Legislature enacted Assembly Bill 1374, which repealed Government Code section 69503(e) and replaced it with section 68150(f), which has since been relettered as subdivision (i). This provision requires only that superior courts preserve comprehensive historical and sample court records for research purposes, but has not defined these categories or specified how many court records must be preserved. AB 1374 also added Government Code section 68153, which requires that superior courts report any court records that they have destroyed to the Judicial Council.

### **The Rule Proposal**

Rule 10.855 “establishes a program to preserve in perpetuity for study by historians and other researchers all superior court records filed before 1911 and a sample of superior court records filed after December 31, 1910, to document the progress and development of the judicial system, and to preserve evidence of significant events and social trends.”<sup>2</sup> As part of this program, this rule currently includes specific requirements for courts to retain comprehensive historical records and either a longitudinal or a combination of a systematic and a subjective sample of court records (the specifics of each of these requirements is discussed in more detail below). The rule also allows the Judicial Council to determine if an augmented sample is needed.

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

This rule proposal would amend rule 10.855 by eliminating the systematic, subjective, and augmented samples and by revising the longitudinal sample and comprehensive records requirement. The benefits of this proposal include (1) reducing the storage needs of superior courts by over 90 percent, (2) eliminating the need for superior courts to identify and select systematic and subjective sample court records every year, (3) eliminating subjective criteria that cause implementation difficulties, and (4) requiring courts to preserve sample court records only once every 19 years. CEAC strongly endorses this proposal because it would alleviate the substantial burden imposed on the courts by the current sampling program.

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<sup>1</sup> For example, the rule was amended in 2000 after unification of the superior and municipal courts to clarify that the scope of the rule had not expanded to include records that were previously filed in municipal courts. Accordingly, the rule was amended to exclude “records of limited civil, small claim, misdemeanor, or infraction cases” from the scope of the rule. (See Cal. Rules of Court, rule 10.855(b).) Today, the rule continues to exclude these records from its scope.

<sup>2</sup> Cal. Rules of Court, rule 10.855(a).

### **Comprehensive historical records**

Rule 10.855(c) requires that courts preserve forever all comprehensive court records, which are defined as (1) all records filed before 1911; (2) if practicable, all records filed after 1910 and before 1950; (3) all case indexes; (4) all judgment books if the court maintains judgment records separate from the case files; (5) all minute books if the court maintains minutes separate from the case files; and (6) all registers of action.

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

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

***Judgment books.*** The proposed amendments would eliminate the requirement in rule 10.855 to retain judgment books (subdivision (c)(4)) because it is redundant and unnecessary. All judgments for unlimited civil and felony cases<sup>3</sup>—whether they are kept in the case files or kept separately<sup>4</sup>—must already be preserved permanently under Government Code section 68152.<sup>5</sup>

***Minute books.*** The proposed amendments would eliminate the requirement to retain minute books (subdivision (c)(5)) because it creates varying records retention practices among courts statewide. Government Code section 68152 does not differentiate between minutes kept in the case files and those kept separately in minute books;<sup>6</sup> both are eligible for destruction under the statute once the retention period for the underlying case type has expired.<sup>7</sup> Nonetheless, rule

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<sup>3</sup> Rule 10.855 does not apply to records of limited civil, small claims, misdemeanor, or infraction cases. (Cal. Rules of Court, rule 10.855(b).)

<sup>4</sup> Judgments must be entered into a judgment book. (Code Civ. Proc., § 668.) But this requirement does not apply if the court files the judgment in the court file, so long as either (1) a microfilm copy of the individual judgment is made, or (2) the judgment is first entered in the register of actions or into the court’s electronic data-processing system. (*Id.*, § 668.5.)

<sup>5</sup> See Gov. Code, § 68152(a)(3), (c)(2), (g)(8).

<sup>6</sup> The clerk of the superior court is required to keep the minutes of the court, entering “any order, judgment, and decree of the court which is required to be entered and showing the date when each entry is made.” (Gov. Code, § 69844.) The clerk may maintain the permanent minutes of court orders in minute books, which are kept separately from case files. (2 Witkin, Cal. Proc. (5th ed. 2008) Courts, § 364, p. 464.) Alternatively, where a court order or local rule requires placing individual minute orders chronologically in the case file, clerks do not need to keep a minute book. (Gov. Code, § 69844.7.)

<sup>7</sup> Gov. Code, § 68152(g)(11) (minute orders kept separately). Because Government Code section 68151(a) defines “court record” as including “[a]ll filed papers and documents in the case folder,” the court record would include

10.855(c)(5) requires those courts that keep minute books to preserve them permanently, resulting in different records retention practices depending on whether the court keeps minute books or files minute orders in case files.

***Registers of action.*** The proposed amendments would eliminate the requirement to retain registers of actions (subdivision (c)(6)) because it also creates divergent records retention practices among courts statewide. In lieu of keeping a register of actions, the court “may maintain a register of actions by preserving all the court records filed, lodged, or maintained in connection with the case.”<sup>8</sup> Government Code section 68152(g)(16) provides that registers of action must be retained for the same retention period as records in the underlying case.<sup>9</sup> Yet, as with minute books, rule 10.855(c)(6) requires only those courts that keep registers of action to preserve them permanently, resulting in varying records retention practices depending on whether the court keeps registers of action or preserves all court records filed, lodged, or maintained in connection with the case in the case file.

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

### **Longitudinal sample**

Rule 10.855(f) currently requires that all courts preserve a longitudinal sample of court records. In the longitudinal sample, three courts assigned in rotation by the Judicial Council must preserve 100 percent of their court records for a calendar year. In practice, each court is selected roughly every 19 years.

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

***Preservation of a partial sample.*** Courts would be required to maintain only a percentage of records for their selected year sufficient to ensure a statistically valid sample, instead of 100

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minute orders placed in the case file under section 69844.7. These minute orders would then become eligible for destruction once the retention period for the underlying case type has expired.

<sup>8</sup> Gov. Code, § 69845.5.

<sup>9</sup> Government Code section 68152(g)(16) does provide an exception for civil and small claims cases, which must be retained for at least 10 years. This exception would have no bearing here because rule 10.855 applies only to unlimited civil cases (Cal. Rules of Courts, rule 10.855(b)), which already must be retained for a period of 10 years. (Gov. Code, § 68152(a)(2).)

percent of their court records, as is currently required. All courts except for the Superior Court of Los Angeles County would be required to retain 25 percent of their records (i.e., every fourth case filed) for the year they are selected to participate in the longitudinal sample. Given the considerably greater number of cases filed with the court compared to other courts, the Superior Court of Los Angeles County would be required to retain only 10 percent of its records (i.e., every tenth case filed) for the year that it is selected.

Based on information provided by the Judicial Council's Office of Court Research, CEAC estimates that retaining only a modified longitudinal sample would significantly reduce the overall number of court records that must be preserved for future research purposes by superior courts. The number of court records would decrease from an estimated 3.5 million to 240,000 over the 19-year period.

***Preservation of judgment books, minute books, and registers of action.*** As described further above, this proposal would eliminate the requirement in rule 10.855(c) that the court must retain all judgment books kept separately from the case files, all minute books kept separately from the case files, and all registers of action. To ensure that all records relevant to the longitudinal sample cases are retained, the proposed amendments would require courts to preserve all judgment books, minute books, and registers of action for their assigned longitudinal year sample.

### **Systematic sample records**

Rule 10.855(f) requires that any court not participating in the longitudinal sample in a given year must preserve a systematic sample consisting of 10 percent or more—but no less than 100 cases—of that year's court records. This proposal would amend rule 10.855 to eliminate this requirement in its entirety.

Eliminating the systematic sampling requirement would result in significant savings for superior courts in terms of operational and storage costs. Moreover, these savings would not result in the loss of a statistically valid statewide sample because courts would still be required to preserve the longitudinal sample.

### **Subjective sample records**

Rule 10.855(f) also requires that those courts not participating in the longitudinal sample must preserve a subjective sample of at least 2 percent, but no fewer than 20 cases, of each year's court records. The subjective sample must include (1) all cases accepted for review by the California Supreme Court; (2) "fat files," or the thickest perceived case files; and (3) cases deemed by the court to be of local, national, or international significance.

***Eliminating the subjective sample.*** With one exception (described below), this proposal would eliminate the subjective sample due to implementation problems. The lack of clear-cut guidelines and criteria has made it difficult for courts to determine which cases are "fat files" or are "of

local, national, or international significance.” CEAC members also reasoned from their experience that the thickness of a case file was often a better indicator of the litigiousness of the parties than the significance of the issues involved.

Because the destruction of court records is discretionary under Government Code section 68152, superior courts would still be authorized to retain any court records identified internally as significant (e.g., high-profile cases covered by the media). (See also Cal. Rules of Court, rule 10.855(a) [“This rule is not intended to restrict a court from preserving more records than the minimum required”].) Under this proposal, however, superior courts would no longer be required to preserve 2 percent of their court records each year and would be free from employing arbitrary indicators of significance, such as the size of the case file.

***Preservation of court records for cases granted review by the California Supreme Court.*** This proposal would retain, but slightly modify, the requirement that courts preserve records for “all cases accepted for review by the California Supreme Court.” To better reflect which cases are of potential interest for historical and research purposes, this proposal would revise this requirement to provide for the preservation of records in “[a]ll noncapital cases in which the California Supreme Court has issued a written decision.”

The California Supreme Court grants review in hundreds of cases for which it never issues, and never intends to issue, a written decision. Instead, it holds these cases in abeyance pending its adjudication of a lead case expected to resolve issues presented in these “grant and hold” cases. This practice has evolved since the sampling program was first introduced in the early 1990s and has come to include a growing number of cases. Under the proposed language, superior courts would preserve the records of only those cases where the court issues a written decision; they would not be required to preserve records in the “grant and hold” cases.

In addition, the proposed amendment excludes capital cases for several reasons. Capital cases are excluded from this requirement under the current rule because these cases are not “accepted for review”; instead, capital cases are automatically appealable to the California Supreme Court. Moreover, all capital cases resulting in a death sentence must already be retained forever under Government Code section 68152(c)(1). This proposal would add an Advisory Committee Comment to explain why capital cases are not included in this requirement.

### **Augmented sample records**

Rule 10.855(g) grants the Judicial Council discretion to “designate a consultant to review, under the guidance of a qualified historian or archivist, court records scheduled for destruction and determine if the court’s systematic sample should be augmented to improve representation of the variety of the cases filed.” Since the rule was adopted in 1994, the Judicial Council has not opted to exercise its discretion under subdivision (g). Nor are CEAC members aware of any superior courts that have preserved an augmented sample under this subdivision. The proposal would amend the rule to eliminate the augmented sample in light of the fact that it has not been utilized.

### **Retroactive implementation**

New subdivision (k) would be added to clarify the application of the rule amendments. Whereas some superior courts regularly review their court records for destruction, others do not and have instead preserved all records by default. Under this proposal, the amended rule would apply retroactively for those courts that have kept their records. It would not apply retroactively to those courts that have been actively destroying eligible records and complying with the current sampling requirements. Instead, these latter courts would be required to comply with the new sampling requirements going forward, starting with the date that the new rule goes into effect.

### **Other proposed amendments to rule 10.855**

Government Code section 68151(a) defines the term “court record” for purposes of the statutes governing records creation, retention, and destruction (Gov. Code, § 68150 et seq). Senate Bill 1489 (Harman; Stats. 2012, ch. 283) amended subdivision (a)(2), effective January 1, 2013, to delete the reference to “paper exhibits.” This proposal would similarly eliminate the reference to “paper exhibits” from the definition of “court record” in rule 10.855(e)(3).

Lastly, the proposal would combine current subdivisions (i) and (k) into one subdivision because both address the storage of comprehensive and sample court records in local archival facilities.

### **The Legislative Proposal**

Under Government Code section 68153, superior courts must provide a “list of the court records destroyed within the jurisdiction of the superior court . . . to the Judicial Council in accordance with the California Rules of Court.” In turn, rule 10.855(l) requires each superior court to submit semiannually to the Judicial Council form REC-003, *Report to Judicial Council: Superior Court Records, Destroyed, Preserved, and Transferred*, which includes the following information: (1) a list by year of filing of the court records destroyed; (2) a list by year of filing and location of the court records of the comprehensive and sample court records preserved; and (3) a list by year of filing and location of the court records transferred to entities under rule 10.856.

The legislative proposal would amend Government Code section 68153 to eliminate the reporting requirement.<sup>10</sup> Complying with this requirement is time-consuming and burdensome for superior courts, and Judicial Council staff has received no requests for these forms. Moreover, when superior courts destroy court records under Government Code section 68153, they are required to make a notation of the date of destruction on the index of cases or on a separate destruction index. This statutory requirement ensures that superior courts establish appropriate mechanisms for tracking whether a court record has been destroyed. Unaware of any reason for tracking these records on a statewide level, CEAC reasons that tracking is best left at the local level.

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<sup>10</sup> If the Legislature enacts this amendment to Government Code section 68153, CEAC intends to recommend eliminating subdivision (l) of rule 10.855.

## **Alternatives Considered**

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

### **Alternative one: Maintain the longitudinal sample as is**

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

### **Alternative two: Maintain the current systematic sample**

The second alternative would have maintained the systematic sample but eliminated the longitudinal, subjective, and augmented samples. Under this alternative, all superior courts would have been required to retain 10 percent of their records every year. This alternative has the advantage of allowing for research into trends within particular courts, which will not be possible under the rule amendments the committee is proposing because records from an individual court would be available only every 19 years.

Nonetheless, CEAC decided against recommending this alternative for two reasons. First, this alternative would still impose a substantial burden on the courts in terms of operational and storage costs. It would require courts to preserve considerably more court records each year than they would under this proposal.

Second, CEAC inferred from the stated purpose of rule 10.855—“to document the progress and development of the judicial system, and to preserve evidence of significant events and social trends”—that the council intended to preserve records for research into broader questions of a statewide nature. This rule proposal would advance this purpose by preserving a statistically valid statewide sample of court records.

### **Alternative three: Modify the systematic sample**

The last alternative considered by CEAC would have eliminated the longitudinal, subjective, and augmented samples and maintained the systematic sample, but with modifications. Under this alternative, the 10 percent annual sampling rate for the systematic sample would vary depending on the size of the court.

This alternative presents the same benefit as alternative two in that researchers could study trends within a particular court. At the same time, it would more closely approximate the reduction in total court records presented in the rule amendments the committee is proposing. CEAC ultimately decided against this alternative because (1) it would differentially impact the courts,

with smaller courts retaining a larger systematic sample than they do currently, and (2) courts would still have to comply with the sampling process yearly, resulting in significant operational costs.

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

Overall, the rule proposal would result in substantial cost savings for the courts because it would significantly reduce the number of court records that courts must preserve forever. The rules and legislative proposals would positively affect operations by simplifying the destruction process: courts would no longer be required to set aside 10 percent of court records each year and would not be required to report destroyed court records to the Judicial Council.

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

## **Request for Specific Comments**

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

- Does the proposal appropriately address the stated purpose?

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

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

### **Attachments**

1. Proposed amendments to Cal. Rules of Court, rule 10.855, pages 10–14
2. Proposed amendments to Government Code section 68153, page 15

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

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

2  
3 **(a) Purpose**

4  
5 This rule establishes a program to preserve in perpetuity for study by historians and  
6 other researchers all superior court records filed before 1911 and a sample of  
7 superior court records filed after December 31, 1910, to document the progress and  
8 development of the judicial system, and to preserve evidence of significant events  
9 and social trends. This rule is not intended to restrict a court from preserving more  
10 records than the minimum required.

11  
12 **(b) Scope**

13  
14 “Records” of the superior court, as used in this rule, does not include records of  
15 limited civil, small claims, misdemeanor, or infraction cases.

16  
17 **(c) Comprehensive and significant records**

18  
19 Each superior court must preserve forever comprehensive and significant court  
20 records as follows:

- 21  
22 (1) All records filed before 1911;
- 23  
24 (2) If practicable, all records filed after 1910 and before 1950;
- 25  
26 (3) All case indexes; and
- 27  
28 ~~(4) All judgment books if the court maintains judgment records separate from the~~  
29 ~~case files;~~
- 30  
31 ~~(5) All minute books if the court maintains minutes separate from the case files;~~  
32 ~~and~~
- 33  
34 ~~(6) All registers of action if the court maintains them.~~
- 35  
36 (4) All noncapital cases in which the California Supreme Court has issued a  
37 written decision.

38  
39 **(d) Sample records**

40  
41 If a superior court destroys court records without preserving them in a medium  
42 described in ~~(h)~~ (g), the court must preserve forever a sample of each year’s court

1 records as provided by this rule of all cases, including sealed, expunged, and other  
2 confidential records to the extent permitted by law.

3  
4 **(e) Court record defined**

5  
6 The “court record” under this rule consists of the following:

- 7  
8 (1) All papers and documents in the case folder; but if no case folder is created  
9 by the court, all papers and documents that would have been in the case  
10 folder if one had been created; and  
11  
12 (2) The case folder, unless all information on the case folder is in papers and  
13 documents preserved in a medium described in ~~(h)~~ (g); and  
14  
15 (3) If available, corresponding depositions, ~~paper exhibits~~, daily transcripts, and  
16 tapes of electronically recorded proceedings.  
17

18 **(f) Sampling technique**

19  
20 Three courts assigned in rotation by the Judicial Council must preserve ~~400 a~~  
21 random sample of 25 percent of their court records for a calendar year  
22 (“longitudinal sample”), with the exception of the Superior Court of Los Angeles  
23 County, which must preserve a random sample of 10 percent of its court records for  
24 a calendar year. Each assigned court must also preserve all judgment books, minute  
25 books, and registers of action if maintained separately from the case files, for the  
26 calendar year. All other courts must preserve a systematic sample of 10 percent or  
27 more of each year’s court records and a 2 percent subjective sample of the court  
28 records scheduled to be destroyed, as follows:  
29

30 ~~(1) The “systematic sample” must be selected as follows after grouping all cases~~  
31 ~~scheduled to be destroyed by filing year:~~

32  
33 ~~(A) If the cases scheduled to be destroyed for a filing year number~~  
34 ~~more than 1,000 cases, the sample must consist of all cases in~~  
35 ~~which the last digit of the case number (0–9) coincides with the~~  
36 ~~last digit of the year in which the case was filed.~~

37  
38 ~~(B) If the cases scheduled to be destroyed for a filing year number~~  
39 ~~from 100 to 1,000, the sample must consist of cases selected by~~  
40 ~~(1) dividing the number of cases filed by 100, rounding fractions~~  
41 ~~down to the next lower number, and (2) counting the cases and~~  
42 ~~preserving each case with a position number in the files or other~~

1 record that corresponds with the number computed (for example,  
2 670 cases ÷ 100 = 6.7; select every sixth case).

3  
4 ~~(C) If fewer than 100 cases of a filing year are scheduled to be  
5 destroyed, all of the cases must be preserved.~~

6  
7 ~~(D) If the records to be destroyed are old, unnumbered cases, the  
8 sample must consist of cases identified by counting the cases (0–  
9 9) and preserving each case with a position number in the file or  
10 other record that corresponds with the number determined under  
11 (A) or (B), unless fewer than 100 cases are to be destroyed.~~

12  
13 ~~(2) The “subjective sample” must consist of at least 2 percent of all cases  
14 scheduled to be destroyed, but not fewer than the court records of 20 cases,  
15 and must include (1) all cases accepted for review by the California Supreme  
16 Court, (2) “fat files” or the thickest perceived case files, and (3) cases deemed  
17 by the court to be of local, national, or international significance. These cases  
18 must be identified by stamp or mark to distinguish them from the systematic  
19 sample. The Judicial Council will provide each court with a list of cases  
20 accepted for review by the California Supreme Court each year.~~

21  
22 ~~(g) Augmented sample; designated advisory consultant~~

23  
24 ~~(1) The Judicial Council may designate a consultant to review, under the  
25 guidance of a qualified historian or archivist, court records scheduled for  
26 destruction and determine if the court’s systematic sample should be  
27 augmented to improve representation of the variety of cases filed.~~

28  
29 ~~(2) The court should give the designated consultant 60 days’ notice of intent to  
30 destroy any court records that it does not plan to retain for the sample.~~

31  
32 ~~(3) The designated consultant’s role is advisory to the court. If the consultant  
33 determines that the systematic sample does not represent the variety of cases  
34 filed in a sample year, the court should select a random sample of cases to  
35 augment the systematic sample.~~

36  
37 ~~(4) Final selection of the court records to augment the sample is to be made by  
38 the clerk of the superior court.~~

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40 ~~(h) (g) Preservation medium~~

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42 ~~(1) Comprehensive and significant court records under (c) filed before 1911 must  
43 be preserved in their original paper form unless the paper is not available.~~

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(2) Comprehensive and significant court records under (c) that are part of the comprehensive sample filed after 1910 and sample records under (d), the systematic sample, and the subjective must be retained permanently in accord with the requirements of the *Trial Court Records Manual*.

**(i) Storage**

~~Until statewide or regional archival facilities are established, each court is responsible for maintaining its comprehensive and sample court records in a secure and safe environment consistent with the archival significance of the records. The court may deposit the court records in a suitable California archival facility such as a university, college, library, historical society, museum, archive, or research institution whether publicly supported or privately endowed. The court must ensure that the records are kept and preserved according to commonly recognized archival principles and practices of preservation.~~

**(j) (h) Access**

The court must ensure the following:

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

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

(1) Until statewide or regional archival facilities are established, each court is responsible for maintaining its comprehensive, significant, and sample court records in a secure and safe environment consistent with the archival significance of the records. The court may deposit the court records in a suitable California archival facility such as a university, college, library, historical society, museum, archive, or research institution whether publicly supported or privately endowed. The court must ensure that the records are kept and preserved according to commonly recognized archival principles and practices of preservation.

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

**(j) Reporting requirement**

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

- (1) A list by year of filing of the court records destroyed;
- (2) A list by year of filing and location of the court records of the comprehensive and sample court records preserved; and
- (3) A list by year of filing and location of the court records transferred to entities under rule 10.856.

**(k) Application**

The sampling program provided in this rule, as amended effective July 1, 2016, applies to all superior courts on and after July 1, 2016. It also applies retroactively to any superior courts that did not participate in the sampling program set forth in previous versions of this rule because it preserved court records indefinitely.

**Advisory Committee Comment**

**Subdivision (c)(4).** Capital cases are excluded under subdivision (c)(4) because these cases have an automatic right of appeal to the California Supreme Court and trial court records are retained permanently under Government Code section 68152(c)(1) if the defendant is sentenced to death.

Government Code section 68153 would be amended, effective January 1, 2017, to read:

1 **Government Code section 68153**

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

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