

# Judicial Council of California • Administrative Office of the Courts

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## INVITATION TO COMMENT SPR12-07

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Title	Action Requested
Appellate Court Administration: Court of Appeal Records	Review and submit comments by Friday, June 15, 2012
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 10.1028	January 1, 2013
Proposed by	Contact
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Court Technology Advisory Committee Hon. Ming W. Chin, Chair	Patrick O'Donnell, 415-865-7665 patrick.o'donnell@jud.ca.gov

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### **Executive Summary and Origin**

The Appellate and the Court Technology Advisory Committees propose that the rule regarding preservation of Court of Appeal records be updated to reflect recent changes in the Government Code section regarding creation, maintenance, and preservation of trial court records on which this appellate rule is based. These amendments are intended to allow the Courts of Appeal to take advantage of modern technology in the creation, maintenance, and preservation of their records.

### **Background**

Subdivision (a) of rule 10.1028 addresses how Court of Appeal records may be preserved. This provision contains language from and cross-references to Government Code section 68150, which addresses preservation of trial court records. When this rule provision was adopted in 1997, the stated purpose was “allowing the appellate courts to use the same means for storing records that the trial courts use.”

Under Assembly Bill 1296 (Evans), Government Code section 68150 was amended effective January 1, 2011, to allow trial courts to take advantage of modern technology in the creation, maintenance, and preservation of trial court records. Among other things, the amendments to Government Code section 68150:

*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 These proposals are circulated for comment purposes only.*

- Authorized the creation as well as maintenance of trial court records in electronic form;
- Modified the language about permissible forms in which court records can be maintained, including allowing records to be the form or forms specified in rules adopted by the Judicial Council rather than those specified in standards or guidelines for preservation and reproduction adopted by the American National Standards Institute or the Association for Information and Image Management;
- Authorized the signing and verification of trial court documents using a computer or other technology; and
- Relettered the subdivisions in the section.

With the enactment of these statutory changes, a number of the provisions in rule 10.1028(a) have become outdated or refer to incorrect subdivisions of section 68150.

### **The Proposal**

To once again make the law on Court of Appeal records similar to and consistent with the law on trial court records, the committees propose the following amendments to rule 10.1028:

- Amending subdivision (a)(1) to explicitly permit the creation as well as maintenance of Court of Appeal records in electronic form, as Government Code section 68150 now permits for trial court records;
- Further amending subdivision (a)(1) to delete the reference to standards or guidelines of the American National Standards Institute or the Association for Information and Image Management and replace it with a reference to the standards or guidelines that section 68150 now authorizes the Judicial Council to adopt for the creation, maintenance, reproduction, and preservation of trial court records;
- Amending subdivision (a)(2) to update the cross-references to the relettered subdivisions of Government Code section 68150; and
- Adding new subdivision (b) to authorize the signing and verification of Court of Appeal documents using a computer or other technology, as Government Code section 68150 now explicitly permits for trial court records.

These amendments are urgently needed to respond to a recent change in the law and are intended to provide significant cost savings and efficiencies for the Courts of Appeal by allowing them to take advantage of modern technology in the creation, maintenance, and preservation of their records.

### **Alternatives considered**

The committees considered whether rule 10.1028 should include a cross-reference to subdivision (b) of Government Code section 68150 and decided not to propose the

inclusion of such a cross-reference. The language in section 68150(b) regarding electronic recordings was previously in subdivision (a) of section 68150. Under rule 10.1028, subdivision (a) of section 68150 was not applicable to Court of Appeal records. The new statutory language in 68150(b) regarding court reporter's transcripts need not be reflected in rule 10.1028 because applicable statutory provisions regarding creation and access to reporter's transcripts would prevail over any conflicting provision in the Rules of Court.

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

This proposal would not require any Court of Appeal to change the way it currently preserves court records, but it would allow those courts that determine it would be more cost-effective and efficient to do so to create, maintain, or preserve records in modern electronic format. There are likely to be some implementation costs for those Courts of Appeal that chose to modify the way they create, maintain, or preserve records, but each court will be able to determine whether the cost efficiencies of making this change outweigh the implementation costs.

## **Request for Specific Comments**

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on whether the proposal appropriately addresses its stated purpose.

The advisory committees also seek comments from *courts* on the following cost and implementation matters:

- Will the proposal provide cost savings? If so, please quantify.
- What are the implementation requirements 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 system, 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 and Links**

Government Code section 68150 can be accessed at [www.leginfo.ca.gov/calaw.html](http://www.leginfo.ca.gov/calaw.html)

Rules 10.1028 of the California Rules of Court would be amended, effective January 1, 2013, to read:

**Title 10. Judicial Administration Rules**

**Division 5. Appellate Court Administration**

**Chapter 1. Rules Relating to the Supreme Court and Courts of Appeal**

**Rule 10.1028. Preservation and destruction of Court of Appeal records**

**(a) Form or forms in which records may be preserved**

- (1) Court of Appeal records may be created, maintained, and preserved in any appropriate medium form or forms of communication or representation, including paper or an optical, electronic, magnetic, micrographic, or photographic media; or microphotographic medium or other technology, if the form or forms of representation or communication satisfy the standards or guidelines for the creation, maintenance, reproduction, and preservation of court records established under rule 10.854 capable of accurately reproducing the original. The medium used must comply with the 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.
- (2) If records are preserved in a medium other than paper, the following provisions of Government Code section 68150 apply: subdivisions ~~(b)–(d)~~ (c)–(l), excluding subdivision ~~(f)(1)(i)(1); and (g)–(h)~~.

**(b) Methods for signing, subscribing or verifying documents**

Any notice, order, ruling, decision, opinion, memorandum, certificate of service, or similar document issued by an appellate court or by a judicial officer of an appellate court may be signed, subscribed, or verified using a computer or other technology in accordance with procedures, standards, and guidelines established by the Judicial Council. Notwithstanding any other provision of law, all notices, orders, rulings, decisions, opinions, memoranda, certificates of service, or similar documents that are signed, subscribed, or verified by computer or other technological means under this subdivision shall have the same validity, and the same legal force and effect, as paper documents signed, subscribed, or verified by an appellate court or a judicial officer of the court.

1 ~~(b)~~(c) **Permanent records**

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3 The Court of Appeal clerk must permanently keep the court's minutes and a register of  
4 appeals and original proceedings.  
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6 ~~(e)~~(d) **Time to keep other records**

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8 (1) Except as provided in (2), the clerk may destroy all other records in a case 10 years  
9 after the decision becomes final, as ordered by the administrative presiding justice  
10 or, in a court with only one division, by the presiding justice.  
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12 (2) In a criminal case in which the court affirms a judgment of conviction, the clerk  
13 must keep the original reporter's transcript for 20 years after the decision becomes  
14 final.  
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