



JUDICIAL COUNCIL  
OF CALIFORNIA

COURT EXECUTIVES  
ADVISORY COMMITTEE

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**COURT EXECUTIVES ADVISORY COMMITTEE (CEAC)**

**RECORDS MANAGEMENT SUBCOMMITTEE**

**MINUTES OF OPEN MEETING**

October 19, 2015

3:00-4:00 P.M.

Conference Call

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**Advisory Body Members Present:** Richard Feldstein (Chair), Alan Carlson, Jake Chatters, Kevin Lane, Pat Patterson, Tricia Penrose, and Kim Turner

**Judicial Staff Present:** Tara Lundstrom, Patrick O'Donnell, and Josely Yangco-Fronza

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**OPEN MEETING**

**Call to Order and Roll Call**

The chair called the meeting to order at 3:07 p.m., and took roll call.

**Written Comments Received**

No written comments were received.

**Approval of Minutes**

The subcommittee reviewed and approved the public minutes of the July 23, 2015, subcommittee meeting.

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**DISCUSSION AND ACTION ITEMS (ITEMS 1-2)**

**Item 1**

***Trial Court Records Manual (TCRM) Updates: Electronic Signatures Standards and Guidelines (Action Required)***

Mr. Jake Chatters, Chair, E-Signature Subgroup, provided an overview of the trial court comment process for the updates to the *Trial Court Records Manual (TCRM)* concerning electronic signatures. Comments were received from the superior courts of Imperial, Los Angeles, and Riverside. Mr. Chatters walked the members through the courts' comments and discussed the subcommittee responses. Two additional practice tips were included in response to the courts' comments to suggest that courts may want to consider adopting different signatures

depending on who is applying the signature and in deciding what types of verification data should be retained.

Mr. Chatters also advised the subcommittee that the language in section 6.2.1.G was changed from “subject to” to “*should align, to the extent possible*, with the data and information security guidelines recommended in *How to Use the Information Systems Controls Framework: A Guide to California Superior Courts*.” This makes the language more suggestive rather than directive or a requirement.

**Motion:**

Ms. Kim Turner made a motion to approve the draft report and attachments and to submit to CEAC at their November 5 business meeting. Mr. Alan Carlson seconded the motion. The CEAC Records Management Subcommittee unanimously approved the motion.

**Item 2**

**2016 Records Management Subcommittee Projects**

The subcommittee reviewed and discussed the possible subcommittee projects for 2016 that can be included on the 2016 CEAC Annual Agenda.

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**A D J O U R N M E N T**

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There being no further business, the meeting was adjourned at 3:48 p.m.

Approved by the advisory body on \_\_\_\_\_.

**CURRENT SCHEDULE**

**ROTATION ASSIGNMENT  
FOR LONGITUDINAL (100%) SAMPLE  
Rule 6.755  
As of January 1, 2000**

<b>YEAR OF FILING</b>	<b>CALIFORNIA SUPERIOR COURTS</b>		
	<b>Group 1</b>	<b>Group 2</b>	<b>Group 3</b>
2000	Del Norte	Lake	Madera
2001	Glenn	Marin	Merced
2002	Inyo	Mendocino	Monterey
2003	Lassen	Napa	Orange
2004	Mariposa	Nevada	Riverside
2005	Modoc	Placer	San Bernardino
2006	Mono	Sacramento	San Diego
2007	Plumas	San Francisco	San Luis Obispo
2008	San Benito	San Joaquin	San Mateo
2009	Sierra	Shasta	Santa Barbara
2010	Siskiyou	Solano	Santa Clara
2011	Trinity	Sonoma	Santa Cruz
2012	Alpine	Sutter	Stanislaus
2013	Amador	Tehama	Tulare
2014	Calaveras	Yolo	Tuolumne
2015	Colusa	Yuba	Ventura
2016	Del Norte	Alameda	Fresno
2017	Glenn	Butte	Imperial
2018	Inyo	Contra Costa	Kern
2019	Lassen	El Dorado	Kings
2020	Mariposa	Humboldt	Los Angeles
2021	Lake	Madera	Modoc
2022	Marin	Merced	Mono

**CURRENT SCHEDULE**

**ROTATION ASSIGNMENT  
FOR LONGITUDINAL (100%) SAMPLE  
Rule 6.755  
As of January 1, 2000**

<b>YEAR OF FILING</b>	<b>CALIFORNIA SUPERIOR COURTS</b>		
	<b>Group 1</b>	<b>Group 2</b>	<b>Group 3</b>
2023	Mendocino	Monterey	Plumas
2024	Napa	Orange	San Benito
2025	Nevada	Riverside	Sierra
2026	Placer	San Bernardino	Siskiyou
2027	Sacramento	San Diego	Trinity
2028	San Francisco	San Luis Obispo	Alpine
2029	San Joaquin	San Mateo	Amador
2030	Shasta	Santa Barbara	Calaveras
2031	Solano	Santa Clara	Colusa
2032	Sonoma	Santa Cruz	Del Norte
2033	Sutter	Stanislaus	Glenn
2034	Tehama	Tulare	Inyo
2035	Yolo	Tuolumne	Lassen
2036	Yuba	Ventura	Mariposa
2037	Alameda	Fresno	Modoc
2038	Butte	Imperial	Mono
2039	Contra Costa	Kern	Plumas
2040	El Dorado	Kings	San Benito
2041	Humboldt	Los Angeles	Sierra
2042	Madera	Siskiyou	Lake
2043	Merced	Trinity	Marin
2044	Monterey	Alpine	Mendocino
2045	Orange	Amador	Napa

**CURRENT SCHEDULE**

**ROTATION ASSIGNMENT  
FOR LONGITUDINAL (100%) SAMPLE  
Rule 6.755  
As of January 1, 2000**

<b>YEAR OF FILING</b>	<b>CALIFORNIA SUPERIOR COURTS</b>		
	<b>Group 1</b>	<b>Group 2</b>	<b>Group 3</b>
2046	Riverside	Calaveras	Nevada
2047	San Bernardino	Colusa	Placer
2048	San Diego	Del Norte	Sacramento
2049	San Luis Obispo	Glenn	San Francisco
2050	San Mateo	Inyo	San Joaquin
2051	Santa Barbara	Lassen	Shasta
2052	Santa Clara	Mariposa	Solano
2053	Santa Cruz	Modoc	Sonoma
2054	Stanislaus	Mono	Sutter
2055	Tulare	Plumas	Tehama
2056	Tuolumne	San Benito	Yolo
2057	Ventura	Sierra	Yuba
2058	Fresno	Siskiyou	Alameda
2059	Imperial	Trinity	Butte
2060	Kern	Alpine	Contra Costa
2061	Kings	Amador	El Dorado
2062	Los Angeles	Calaveras	Humboldt
2063	Colusa	Lake	Madera
2064	Del Norte	Marin	Merced
2065	Glenn	Mendocino	Monterey

Original

Modified - 3 Groups

<b>RAS Cluster</b>	<b>Court</b>		<b>Groups for Sampling</b>	<b>Court</b>
1	Alpine	1	1	Alpine
1	Amador	2	1	Amador
1	Calaveras	3	1	Calaveras
1	Colusa	4	1	Colusa
1	Del Norte	5	1	Del Norte
1	Glenn	6	1	Glenn
1	Inyo	7	1	Inyo
1	Lassen	8	1	Lassen
1	Mariposa	9	1	Mariposa
1	Modoc	10	1	Modoc
1	Mono	11	1	Mono
1	Plumas	12	1	Plumas
1	San Benito	13	1	San Benito
1	Sierra	14	1	Sierra
1	Trinity	15	1	Trinity
2	Butte	16	1	Butte
2	El Dorado	17	1	El Dorado
2	Humboldt	18	1	Humboldt
2	Imperial	19	1	Imperial
2	Kings	20	1	Kings
2	Lake	1	2	Lake
2	Madera	2	2	Madera
2	Marin	3	2	Marin
2	Mendocino	4	2	Mendocino
2	Merced	5	2	Merced
2	Napa	6	2	Napa
2	Nevada	7	2	Nevada
2	Placer	8	2	Placer
2	San Luis Obispo	9	2	San Luis Obispo
2	Santa Cruz	10	2	Santa Cruz
2	Shasta	11	2	Shasta
2	Siskiyou	12	2	Siskiyou
2	Sutter	13	2	Sutter
2	Tehama	14	2	Tehama
2	Tuolumne	15	2	Tuolumne
2	Yolo	16	2	Yolo
2	Yuba	17	2	Yuba
3	Contra Costa	18	2	Contra Costa
3	Fresno	19	2	Fresno
3	Kern	1	3	Kern
3	Monterey	2	3	Monterey
3	San Joaquin	3	3	San Joaquin
3	San Mateo	4	3	San Mateo
3	Santa Barbara	5	3	Santa Barbara
3	Solano	6	3	Solano
3	Sonoma	7	3	Sonoma
3	Stanislaus	8	3	Stanislaus
3	Tulare	9	3	Tulare
3	Ventura	10	3	Ventura
4	Alameda	11	3	Alameda
4	Los Angeles	12	3	Los Angeles
4	Orange	13	3	Orange
4	Riverside	14	3	Riverside
4	Sacramento	15	3	Sacramento
4	San Bernardino	16	3	San Bernardino
4	San Diego	17	3	San Diego
4	San Francisco	18	3	San Francisco
4	Santa Clara	19	3	Santa Clara

**Rule 10.855 Sampling Rotation - Random assignment of rotation**

Group	Court		Random Number
1	1	Plumas	0.0162
2	1	Calaveras	0.0176
3	1	Butte	0.0875
4	1	Humboldt	0.1136
5	1	Mariposa	0.2389
6	1	Inyo	0.2759
7	1	Alpine	0.3313
8	1	Glenn	0.3934
9	1	Amador	0.4069
10	1	Mono	0.5363
11	1	Del Norte	0.5501
12	1	Trinity	0.5669
13	1	San Benito	0.5807
14	1	Sierra	0.7586
15	1	Colusa	0.8060
16	1	Imperial	0.8727
17	1	Kings	0.9196
18	1	Modoc	0.9556
19	1	Lassen	0.9595
20	1	El Dorado	0.9766

Group	Court		Random Number
1	2	Lake	0.0721
2	2	Marin	0.1287
3	2	Napa	0.1819
4	2	Mendocino	0.1927
5	2	Merced	0.1963
6	2	Sutter	0.2244
7	2	Tuolumne	0.2835
8	2	Yuba	0.4112
9	2	Tehama	0.4382
10	2	Madera	0.4504
11	2	Shasta	0.4756
12	2	Contra Costa	0.4861
13	2	Siskiyou	0.5051
14	2	Nevada	0.5092
15	2	Fresno	0.6448
16	2	Yolo	0.6883
17	2	Santa Cruz	0.8178
18	2	San Luis Obispo	0.8247
19	2	Placer	0.9362

Group	Court		Random Number
1	3	Santa Clara	0.0245
2	3	Ventura	0.0386
3	3	Alameda	0.0745
4	3	San Diego	0.2185
5	3	Santa Barbara	0.3173
6	3	San Bernardino	0.3681
7	3	Stanislaus	0.3998
8	3	San Joaquin	0.4492
9	3	San Mateo	0.5061
10	3	San Francisco	0.5767
11	3	Tulare	0.6051
12	3	Los Angeles	0.6805
13	3	Riverside	0.6900
14	3	Sacramento	0.7123
15	3	Solano	0.7523
16	3	Orange	0.9058
17	3	Kern	0.9166
18	3	Monterey	0.9641
19	3	Sonoma	0.9922

## Rule 10.855 Sampling Rotation - Initial Random Assignment

	Year	Group 1	Group 2	Group 3
<b>Current Cycle</b>	2010	Siskiyou	Solano	Santa Clara
	2011	Trinity	Sonoma	Santa Cruz
	2012	Alpine	Sutter	Stanislaus
	2013	Amador	Tehama	Tulare
	2014	Calaveras	Yolo	Tuolumne
	2015	Colusa	Yuba	Ventura
	2016	Del Norte	Alameda	Fresno
<b>New Cycle</b>	2017	Plumas	Lake	Santa Clara
	2018	Calaveras	Marin	Ventura
	2019	Butte	Napa	Alameda
	2020	Humboldt	Mendocino	San Diego
	2021	Mariposa	Merced	Santa Barbara
	2022	Inyo	Sutter	San Bernardino
	2023	Alpine	Tuolumne	Stanislaus
	2024	Glenn	Yuba	San Joaquin
	2025	Amador	Tehama	San Mateo
	2026	Mono	Madera	San Francisco
	2027	Del Norte	Shasta	Tulare
	2028	Trinity	Contra Costa	Los Angeles
	2029	San Benito	Siskiyou	Riverside
	2030	Sierra	Nevada	Sacramento
	2031	Colusa	Fresno	Solano
	2032	Imperial	Yolo	Orange
	2033	Kings	Santa Cruz	Kern
	2034	Modoc	San Luis Obispo	Monterey
	2035	Lassen	Placer	Sonoma
	2036	El Dorado	Lake	Santa Clara
	2037	Plumas	Marin	Ventura
	2038	Calaveras	Napa	Alameda
	2039	Butte	Mendocino	San Diego
	2040	Humboldt	Merced	Santa Barbara
	2041	Mariposa	Sutter	San Bernardino
	2042	Inyo	Tuolumne	Stanislaus
	2043	Alpine	Yuba	San Joaquin
	2044	Glenn	Tehama	San Mateo
	2045	Amador	Madera	San Francisco
	2046	Mono	Shasta	Tulare
2047	Del Norte	Contra Costa	Los Angeles	
2048	Trinity	Siskiyou	Riverside	
2049	San Benito	Nevada	Sacramento	
2050	Sierra	Fresno	Solano	
2051	Colusa	Yolo	Orange	
2052	Imperial	Santa Cruz	Kern	
2053	Kings	San Luis Obispo	Monterey	
2054	Modoc	Placer	Sonoma	
2055	Lassen	Lake	Santa Clara	
2056	El Dorado	Marin	Ventura	

# PROPOSED NEW SCHEDULE

## Rule 10.855 Sampling Rotation - Final after adjustments

	Year	Group 1	Group 2	Group 3
<b>Current Cycle</b>	2010	Siskiyou	Solano	Santa Clara
	2011	Trinity	Sonoma	Santa Cruz
	2012	Alpine	Sutter	Stanislaus
	2013	Amador	Tehama	Tulare
	2014	Calaveras	Yolo	Tuolumne
	2015	Colusa	Yuba	Ventura
	2016	Del Norte	Alameda	Fresno
<b>New Cycle</b>	2017	Plumas	Lake	San Diego
	2018	Butte	Marin	Santa Barbara
	2019	Humboldt	Napa	San Bernardino
	2020	Mariposa	Mendocino	San Joaquin
	2021	Inyo	Merced	San Mateo
	2022	Glenn	Madera	San Francisco
	2023	Mono	Shasta	Los Angeles
	2024	San Benito	Contra Costa	Riverside
	2025	Sierra	Nevada	Sacramento
	2026	Imperial	San Luis Obispo	Orange
	2027	Kings	Placer	Kern
	2028	Modoc	Sutter	Monterey
	2029	Lassen	Tuolumne	Santa Clara
	2030	El Dorado	Yuba	Ventura
	2031	Calaveras	Tehama	Alameda
	2032	Alpine	Siskiyou	Stanislaus
	2033	Amador	Fresno	Tulare
	2034	Del Norte	Yolo	Solano
	2035	Trinity	Santa Cruz	Sonoma
	2036	Colusa	Lake	San Diego
	2037	Plumas	Marin	Santa Barbara
	2038	Butte	Napa	San Bernardino
	2039	Humboldt	Mendocino	San Joaquin
	2040	Mariposa	Merced	San Mateo
	2041	Inyo	Madera	San Francisco
	2042	Glenn	Shasta	Los Angeles
	2043	Mono	Contra Costa	Riverside
	2044	San Benito	Nevada	Sacramento
	2045	Sierra	San Luis Obispo	Orange
	2046	Imperial	Placer	Kern
2047	Kings	Sutter	Monterey	
2048	Modoc	Tuolumne	Santa Clara	
2049	Lassen	Yuba	Ventura	
2050	El Dorado	Tehama	Alameda	
2051	Calaveras	Siskiyou	Stanislaus	
2052	Alpine	Fresno	Tulare	
2053	Amador	Yolo	Solano	
2054	Del Norte	Santa Cruz	Sonoma	
2055	Trinity	Lake	San Diego	
2056	Colusa	Marin	Santa Barbara	

# JUDICIAL COUNCIL OF CALIFORNIA

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## INVITATION TO COMMENT

### W16-16

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<b>Title</b>	<b>Action Requested</b>
Court Records: Records Sampling and Destruction	Review and submit comments by January 22, 2016
<b>Proposed Rules, Forms, Standards, or Statutes</b>	<b>Proposed Effective Date</b>
Amend Government Code section 68153; amend Cal. Rules of Court, rule 10.855	July 1, 2016
<b>Proposed by</b>	<b>Contact</b>
Court Executives Advisory Committee Richard D. Feldstein, Chair	Tara Lundstrom, 415-865-7650 <a href="mailto:tara.lundstrom@jud.ca.gov">tara.lundstrom@jud.ca.gov</a> Josely Yangco-Fronza, 415-865-7626 <a href="mailto:josey.yangco-fronza@jud.ca.gov">josey.yangco-fronza@jud.ca.gov</a>

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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.~~

39  
40 ~~(h) (g) Preservation medium~~

41  
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.