

Invitation to Comment

Title	Court Administration: Modernize Rules on Trial Court Records (adopt Cal. Rules of Court, rules 10.850 and 10.854; amend rule 10.855; and repeal standard 10.80).
Summary	This rules proposal is a companion to the pending legislation to modernize the creation, maintenance, and preservation of trial court records. Under this proposal, the Judicial Council would adopt a rule that would require the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, to prepare, maintain, and distribute to the trial courts a manual providing standards and guidelines for the creation, maintenance, and retention of trial court records (“ <i>Trial Court Records Manual</i> ”), consistent with the Government Code and the rules of court and policies adopted by the Judicial Council. The manual would be designed to assist the courts and the public to have complete, accurate, efficient, and accessible court records.
Source	<p>Court Executives Advisory Committee Mr. Michael M. Roddy, Chair</p> <p>Court Technology Advisory Committee Hon. Ming W. Chin, Chair</p>
Staff	<p>Patrick O’Donnell, Supervising Attorney Office of the General Counsel patrick.o’donnell@jud.ca.gov, 415-865-7665</p> <p>Patrick Danna, Court Services Analyst Executive Office Programs - Court Program Services patrick.danna@jud.ca.gov, 415-865-7992,</p>

Background

Electronic Court Records

Court records¹ have historically been maintained in paper form. In California, a vast amount of storage space is currently devoted to paper files of court records. In 2007, a survey indicated that court records were stored in at least 276 locations throughout the

¹ This proposal relates to trial court records as distinguished from administrative records of the trial courts. Court records are records filed, lodged, or maintained in connection with a case. See Government Code section 68151; see also proposed rule 10.850.

state (courthouses and off-site facilities) that totaled 1,854,992 linear feet.² The total reported cost associated with records management during fiscal year 2005–2006 was \$21,619,815. Annual storage costs totaled \$1,814,530. Staff costs to create and maintain these records for this same period totaled \$14,908,919. Two-thirds of the courts retrieve records every day; on average they travel 15 miles to do so. Thus, court records in paper form are expensive to create, maintain, access, and preserve.

But with the increasing availability of electronic document management systems, the courts have an opportunity to realize significant long-term savings if they can convert from paper to electronic records. Authorizing records to be created, maintained, and preserved in electronic forms is practical and economic.

The Legislation

To facilitate the transition to electronic court records some statutory changes are needed. The statutes on court records already have been modernized, in some respects, to reflect the digital age. For example, section 68150 of the Government Code provides that records reproduced under specific standards may be deemed the original court record. (See Gov. Code, § 68150(c).) However, additional changes are necessary to fully realize the possibilities afforded by electronic records management and ever-changing technology and business practices.

At the recommendation of the Court Executives Advisory Committee, in December 2009, the Judicial Council approved sponsoring legislation to address this issue.³ This legislation, which has been introduced as Assembly Bill 1926 (Evans),⁴ will modernize the law on the creation, maintenance, and preservation of court records. Currently, Government Code section 68150, the principal statute on the management of trial court records, provides that trial court records may be preserved in any form of communication or representation including optical, electronic, magnetic, micrographic, or photographic media or other technology, provided the medium satisfies certain minimum standards or guidelines for the preservation and reproduction of the medium that have been adopted by the American National Standards Institute or the Association for Information and Image Management.

The council-sponsored legislation would amend this section to modernize it and afford the trial courts the opportunity to capitalize on the emerging records and document management technologies that are considered best practices in the records management industry. Specifically, the legislation would add the words “created” and “maintained”

² Forty-nine of the 58 courts responded to the survey.

³ The Judicial Council report on this legislation is at www.courtinfo.ca.gov/jc/documents/reports/121509item2.pdf.

⁴ The text of the bill is available at www.leginfo.ca.gov/pub/09-10/bill/asm/ab_1901-1950/ab_1926_bill_20100318_amended_asm_v98.pdf.

before “preserved.” This change will make it clear that courts can not only preserve, but also create and maintain, records in electronic form.

In addition, the references to standards or guidelines adopted by particular organizations would be eliminated. This language is problematic because the organizations have not always adopted specific standards for certain mediums or the permanent preservation of documents in electronic form. Under the legislation, instead of requiring records to comply with guidelines or standards adopted by particular organizations, a new provision in Government Code section 68150 would require the Judicial Council to adopt rules to establish standards or guidelines for the creation, maintenance, reproduction, and preservation of court records.

Assembly Bill 1926, as amended April 6, 2010, provides, in part:

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

This legislation that provides that the Judicial Council will adopt rules to establish standards and guidelines for court records is more practical and flexible than the current court records statutes. The amended statutes will enable the standards or guidelines to be regularly revised to reflect best practices and current industry standards, to be expeditiously updated to address changes in technology, and to cover situations where no specific national standards or guidelines have been promulgated.

Proposal

This proposal would adopt a new rule of court to implement the legislation modernizing court records.⁵ Specifically, rule 10.854 would require the Administrative Office of the Courts, in collaboration with trial court presiding judges and court executives, to prepare, maintain, and distribute a manual providing standards or guidelines for the creation,

⁵ The rules proposal is contingent on the enactment this year of the legislation on court records, which will require the council to adopt implementing rules.

maintenance, and retention of trial court records (“*Trial Court Records Manual*”), consistent with the Government Code and the rules of court and policies adopted by the Judicial Council. The manual would assist the courts and the public to have complete, accurate, efficient, and accessible court records. Before the manual is issued, it must be made available for comment from the trial courts. (Cal. Rules of Court, rule 10.854(a).)

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

The manual would be periodically updated to reflect changes in technology that affect the creation, maintenance, and retention of court records. Except for technical changes or corrections or minor substantive changes not likely to create controversy, proposed changes in the manual must be made available for comment from the trial courts before the manual is updated or changed. Courts must be notified of any changes in the standards or guidelines, including all those relating to the permanent retention of records. (Rule 10.854(c).)

Reflecting the pending legislation, the rule would require courts to adhere to the standards and guidelines, except as otherwise provided. (Cal. Rules of Court, rule 10.854(d).) These standards and guidelines will implement the intent of the legislation as described above. Courts will benefit significantly from having a reference manual that highlights proven technologies and offers sample policies and procedures that can help them meet the challenges of effectively managing a huge volume of court records.

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

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

Rules 10.850 and 10.854 of the California Rules of Court would be adopted, rule 10.855 would be amended, and standard 10.80 would be repealed, effective January 1, 2011, to read as follows:

1 **Rule 10.850. Trial Court Records**

2
3 Unless otherwise provided, “court records” as used in this chapter consist of the records as
4 defined in Government Code section 68151(a).
5

6 **Rule 10.854. Standards and Guidelines for Trial Court Records**

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

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

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20 The *Trial Court Records Manual* must provide standards and guidelines for the creation,
21 maintenance, and retention of trial court records. These standards and guidelines must
22 ensure that all court records subject to permanent retention are retained and made available
23 to the public in perpetuity as legally required.
24

25 **(c) Updating the manual**

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27 The Administrative Office of the Courts, in collaboration with trial court presiding judges
28 and court executives, must periodically update the *Trial Court Records Manual* to reflect
29 changes in technology that affect the creation, maintenance, and retention of court records.
30 Except for technical changes or corrections or minor substantive changes not likely to
31 create controversy, proposed changes in the manual must be made available for comment
32 from the courts before the manual is updated or changed. Courts must be notified of any
33 changes in the standards or guidelines, including all those relating to the permanent
34 retention of records.
35

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

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38 Trial courts must adhere to the requirements contained in the *Trial Court Records Manual,*
39 except as otherwise provided in the manual.
40

1 **Rule 10.855. Superior Court Records Retention Program**

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3 **(a)–(g) *****

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5 **(h) Preservation medium**

6
7 (1) Comprehensive court records under (c) filed before 1911 must be preserved in their
8 original paper form unless the paper is not available.

9
10 (2) ~~If practicable, courts should preserve paper records filed after January 1, 1911,~~
11 ~~because they are preferred by historians and researchers. Courts may, however,~~
12 ~~reproduce such paper records on microfilm or other electronic or micrographic~~
13 ~~media, if the records are maintained and reproduced in accordance with archival~~
14 ~~standards recommended by the American National Standards Institute or the~~
15 ~~Association for Information and Image Management and the condition of the paper~~
16 ~~records permits reproduction without damage to the originals. [NOTE: As of the~~
17 ~~effective date of this rule, optical disk storage is not recognized as an archival~~
18 ~~medium, although it may become so with advances in technology.] Court records~~
19 ~~that are part of the comprehensive sample filed after 1910, the systematic sample,~~
20 ~~and the subjective sample must be retained permanently in accord with the~~
21 ~~requirements of the *Trial Court Records Manual*.~~

22
23 **(i)–(l) *****

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

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

31
32 ~~Implementation of these standards, which cover creation, use, maintenance, and destruction of~~
33 ~~records, should lead to more efficient court administration, better protection and preservation of~~
34 ~~records, and improved public access to records.~~

Item SPR10-38 Response Form

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

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 18, 2010

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.