



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

455 Golden Gate Avenue · San Francisco, California 94102-3688

[www.courts.ca.gov](http://www.courts.ca.gov)

---

# REPORT TO THE JUDICIAL COUNCIL

For business meeting on: October 26, 2012

---

Title	Agenda Item Type
Court Records: Creation, Maintenance, and Preservation of Court of Appeal Records	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rule 10.1028	January 1, 2013
Recommended by	Date of Report
Appellate Advisory Committee Hon. Kathryn Doi Todd, Chair	August 6, 2012
Court Technology Advisory Committee Hon. Ming W. Chin, Chair	Contact
	Heather Anderson, 415-865-7691 <a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>
	Patrick O'Donnell, 415-865-7665 <a href="mailto:patrick.o'donnell@jud.ca.gov">patrick.o'donnell@jud.ca.gov</a>

---

### Executive Summary

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

### Recommendation

The Appellate and Court Technology Advisory Committees recommend that the Judicial Council, effective January 1, 2013, amend rule 10.1028 of the California Rules of Court to:

1. 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;

2. 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 Government Code section 68150 now authorizes the Judicial Council to adopt for the creation, maintenance, reproduction, and preservation of trial court records;
3. Update cross-references to the relettered subdivisions of Government Code section 68150; and
4. Add 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 documents.

The text of the proposed rule is attached at pages 4–5.

### **Previous Council Action**

The Judicial Council adopted the predecessor to rule 10.1028, regarding preservation and destruction of Court of Appeal records, effective July 1, 1989. Effective July 1, 1997, the Judicial Council amended this rule to add new subdivision (a), which addressed the form in which records may be preserved. As adopted, this subdivision contained language from and cross-referenced to Government Code section 68150, which addresses preservation of trial court records. Although this rule has since been renumbered, the content of subdivision (a) has remained substantively unchanged.

In 2010, the Judicial Council sponsored legislation to amend Government Code section 68150 to allow trial courts to take advantage of modern technology in the creation, maintenance, and preservation of their records. This legislation was enacted and took effect January 1, 2011.

### **Rationale for Recommendation**

The recommended amendments to rule 10.1028 are urgently needed to respond to recent changes 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.

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 subdivision was adopted in 1997, its stated purpose was “allowing the appellate courts to use the same means for storing records that the trial courts use.” Assembly Bill 1926 (Evans; Stats. 2010, ch. 167) amended section 68150, effective January 1, 2011, to allow trial courts to take advantage of modern technology in the creation, maintenance, and preservation of their records. Among other things, the amendments to Government Code section 68150:

- Authorized the creation as well as maintenance of trial court records in electronic form;

- Modified the language about permissible forms of communication or representation in which court records can be maintained, including allowing records to be in the form or forms specified in rules adopted by the Judicial Council rather than those specified in standards or guidelines 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
- Re-lettered the subdivisions in the section.

With the enactment of these statutory amendments, a number of the provisions of rule 10.1028(a) have become outdated or refer to incorrect subdivisions of section 68150. The committees' proposed amendments to rule 10.1028 will once again make this rule on Court of Appeal records parallel to and consistent with the law on trial court records.

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

### **Comments**

This proposal was circulated from April 17 to June 15, 2012, in the regular spring 2012 comment cycle. Seven individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, and one did not indicate a position. A chart with the full text of the comments received and the committees' responses is attached at pages 6–9. Based on these comments, the committees recommend adopting this proposal as circulated.

### **Alternatives**

The committees considered not recommending any amendment to rule 10.1028. However, the committees concluded that it was preferable to revise the rule in order to authorize the Courts of Appeal to take advantage of modern technology in the creation, maintenance, and storage of their records and to correct the outdated statutory cross-references in rule 10.1028.

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

This proposal does not require any Court of Appeal to change the way it currently preserves court records; it would allow those courts that determine it would be more cost-effective and efficient to create, maintain, or preserve records in modern electronic formats to do so. There will likely be some implementation costs for those courts that choose to modify the way they create, maintain, or preserve records, but each Court of Appeal will determine for itself whether the cost efficiencies of such a transition outweigh the implementation costs.

### **Attachments**

1. Cal. Rules of Court, rule 10.1028 at pages 4–5
2. Comment chart, at pages 6–9



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

2  
3 The Court of Appeal clerk must permanently keep the court's minutes and a register of  
4 appeals and original proceedings.  
5

6 ~~(e)~~(d) **Time to keep other records**

7  
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.  
11

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.  
15



**SPR12-07****Appellate Court Administration: Court of Appeal Records** (amend Cal. Rules of Court, rule 10.1028)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
1.	Appellate Courts Committee San Diego County Bar Association Kate Mayer Mangan, Chair	A	Our committee supports the revisions to rule 10.1028 without comment.	The committee appreciates this input.
2.	Committee on Appellate Courts, State Bar of California By: Paul R. Johnson, Chair	A	The Committee on Appellate Courts supports this proposal.	The committee appreciates this input.
3.	Court of Appeal, Fourth Appellate District, Division One By: Kevin Lane Assistant Clerk Administrator	A	<p><i>Will the proposal provide cost savings? If so, please quantify.</i></p> <p>This proposal will provide significant cost savings to the Courts. The estimated expenditures for the Fourth District are approximately \$158,000.00/yr. with our traditional way of storing paper records. With the ability to store records in alternate mediums it is reasonable to project a significant reduction in these costs as we focus more on e-filing and scanning records for storage. In addition to reduced physical storage, the court will gain from having flexible retrieval, flexible indexing, improved searching capabilities, controlled document distribution, improved security and most importantly, no lost files.</p> <p><i>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.</i></p> <p>The implementation requirements are minimal as the proposed rules are flexible and allow the</p>	The committee appreciates this input.

**SPR12-07**

**Appellate Court Administration: Court of Appeal Records** (amend Cal. Rules of Court, rule 10.1028)

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

	Commentator	Position	Comment	Advisory Committee Response
			<p>court to implement records storage if they feel it to be more cost effective or efficient. The training for the creation and maintenance of court records has already been done with the implementation of e-filing. Minor training would take place regarding specific data retrieval methodology. There could be implementation requirements for scanning of records such as verification for accuracy and legibility of the scan. This would include training a Records Assistant on the use of scanning equipment and modifying policies and procedures for the attachment of the electronic record to the document management system.</p> <p><i>Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?</i>                      Yes, this would allow us sufficient time to implement a procedure should each court decide to do so. This proposal is also flexible enough that allows for courts to implement it as time and finances are available.</p> <p><i>How well would this proposal work in courts of different sizes?</i>                      This proposal is flexible enough that it will fit the different sizes of the court well. With the authority to implement this proposal courts will have the ability to customize a product to accommodate their specific needs.</p> <p>One area that may be worth further discussion is Rule 10.1028 (c) Permanent Records. It requires</p>	<p>The committee appreciates this suggestion and will consider it in the upcoming committee year.</p>



**SPR12-07****Appellate Court Administration: Court of Appeal Records** (amend Cal. Rules of Court, rule 10.1028)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
			<p>the clerk to permanently keep original proceedings. This seems to be an excessive time to keep these types of filings. It may be more appropriate to align original proceedings with the same time standards for criminal reporters' transcripts (20 years).</p>	
4.	<p>First District Appellate Project, Appellate Defenders, Inc., and California Appellate Project – San Francisco By: Mat Zerwling Executive Director, First District Appellate Project</p>	NI	<p>We have no comment on the committee's proposed changes to rule 10.128, which governs the manner in which Court of Appeal records may be preserved. Importing the trial court standard for creating, maintaining, and preserving records electronically set forth in Government Code section 68150 into the rule governing the creation, maintenance, and preservation of appellate court records appears to be a reasonable development.</p> <p>We note, however, that the amended rule continues to allow the Court of Appeal clerk to destroy the reporter's transcript in an affirmed criminal case after 20 years have passed (and other records after 10 years have passed). (Rule 10.128(e) [subdivision (d) in the proposed amended rule].) Perhaps, in a future amendment cycle, consideration might be given to whether electronically preserved records could be retained indefinitely, as such records do not take up the physical space occupied by their non-electronic counterparts and it might even be more costly to take staff time to destroy them than it would be to retain them.</p>	<p>The committee appreciates this input.</p> <p>The committee appreciates this suggestion and will consider it in the upcoming committee year.</p>

**SPR12-07****Appellate Court Administration: Court of Appeal Records** (amend Cal. Rules of Court, rule 10.1028)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Advisory Committee Response</b>
5.	Orange County Bar Association By: Dimetria Jackson, President	A	No additional comments	The committee appreciates this input.
6.	Superior Court of California, County of San Diego By: Michael M. Roddy, Executive Officer	A	This change may assist the courts in general with future decisions to allow image transfer of the appeal record either via CD, electronically, etc. as the Court of Appeal would be able to store the documents in that format.	The committee appreciates this input.
7.	Don Willenburg Attorney San Francisco	A	I support 12-07, which well serves its stated worthy purposes. There is no reason courts of appeal should not have as much flexibility as do trial courts in the use of technology to create, maintain and store records	The committee appreciates this input.