

COMMONWEALTH OF MASSACHUSETTS

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At the Supreme Judicial Court holden at Boston within and for said Commonwealth on the twenty-seventh day of June, in the year two thousand and eighteen:

present,

<u>HON. RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>HON. BARBARA A. LENK</u>	)	
	)	
	)	
<u>HON. FRANK M. GAZIANO</u>	)	Justices
	)	
	)	
<u>HON. DAVID A. LOWY</u>	)	
	)	
	)	
<u>HON. KIMBERLY S. BUDD</u>	)	
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	)	
<u>HON. ELSPETH B. CYPHER</u>	)	
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<u>HON. SCOTT L. KAFKER</u>	)	

ORDERED: That Chapter One of the Rules of the Supreme Judicial Court is hereby amended as follows:

Rule 1:11           By striking the current Rule 1:11 and inserting in lieu thereof the new Rule 1:11, as attached hereto.

The amendment accomplished by this order shall take effect on October 1, 2018.

ORDERED:

<u>RALPH D. GANTS</u>	)	Chief Justice
	)	
<u>BARBARA A. LENK</u>	)	
	)	
	)	
<u>FRANK M. GAZIANO</u>	)	Justices
	)	
	)	
<u>DAVID A. LOWY</u>	)	
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<u>KIMBERLY S. BUDD</u>	)	
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<u>ELSPETH B. CYPHER</u>	)	
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<u>SCOTT L. KAFKER</u>	)	

RULE 1:11: Rule Relative to the Disposal of Court Papers and Records.

(G. L. c. 221, § 27A, as amended)

Section 1. Scope. This Rule shall govern the disposal of all court case records, regardless of the form in which they were created or are retained.

Section 2. Definitions. The following definitions apply in this Rule:

Clerk - the clerks of the Supreme Judicial Court, the clerk of the Appeals Court, the recorder of the Land Court, the registers of Probate, and the clerks of the Boston Municipal Court, District Court, Housing Court, Juvenile Court and Superior Court departments of the Trial Court.

Case records - case papers or records that have been filed or deposited in paper or electronic form in any court of the commonwealth or that are in the custody of any clerk.

Docket - the paper or electronic list of case information maintained by the clerk that contains the case caption, case number, and a chronological entry identifying the date and title of each paper, document, exhibit, order, or judgment filed in a case, and the scheduling and occurrence of events in the case.

Extended record - as described in G. L. c. 34, § 9E: an abbreviated chronicle of all matters entered upon the docket, under the same or a similar title or an abstract thereof, and under the same number, and shall contain a brief and concise narrative of the essential features of the matter. Any final judgment, decree or order affecting the title to land shall be copied therein at length.

Minor violation records - case records, other than dockets, filed in or relating to a proceeding involving civil motor vehicle infractions, parking, littering, bicycles, pedestrians, municipal dog control, the decriminalized disposition of violations of municipal ordinances or by-laws or other decriminalized regulatory offenses.

Sampling - the process of retaining designated case records in accordance with an Order re Sampling of Case Records issued from time to time by the Supreme Judicial Court.

Section 3. Required Permanent Retention of Case Records. The following types of case records shall be retained permanently and shall not be subject to the provisions of Section 7 regarding the destruction of case records:

A. The Supreme Judicial Court and the Appeals Court.

- (1) all trial court transcripts in cases decided by the Supreme Judicial Court shall be retained.
- (2) all case records under the custody of the clerks of the Supreme Judicial Court or the clerk of the Appeals Court shall be retained except:
  - (a) papers unrelated to the appellate courts' deliberation and decision, after the rescript issues to the trial court;
  - (b) record appendices upon final disposition of the case; and
  - (c) original exhibits transmitted pursuant to an order or rule of court, which shall be returned to the trial court after review by the appellate court.

B. All Departments of the Trial Court. The following types of case records shall be retained permanently in all departments of the Trial Court:

- (1) case records in all cases decided by the Supreme Judicial Court;
- (2) old case records, defined as:
  - (a) any records dated or known to have been filed earlier than 1800; and
  - (b) all records from any predecessor court to the District Court or the Boston Municipal Court;
- (3) dockets and extended records, except for dockets and extended records for minor violation records, which shall be subject to the sampling provisions set forth in an Order issued by the Supreme Judicial Court pursuant to Section 6;
- (4) divorce judgments nisi and absolute and judgments in annulment actions; and
- (5) naturalization records prior to 1906.

In addition, for time periods in which both dockets and extended records are missing from a trial court in a particular courthouse, all other case records from that time period in that trial court at that courthouse shall be retained.

C. Individual Departments of the Trial Court. In addition to the case records that shall be retained permanently in every department, the following case records shall be retained by individual departments:

- (1) District Court, Boston Municipal Court, Juvenile Court and Probate and Family Court. The following shall be retained permanently:

- (a) all case records, acknowledgments and agreements filed to establish paternity pursuant to G. L. c. 209C; and
- (b) all case records filed in or relating to an adoption filed pursuant to G. L. c. 210, or a name change filed pursuant to G. L. c. 210, § 12.

(2) Land Court. The following shall be retained permanently:

- (a) all registration case records, abstracts, plans and proceedings subsequent to registration; and
- (b) all case records relating to the foreclosure of the right of redemption pursuant to G. L. c. 60, § 65.

(3) Probate and Family Court. The following shall be retained permanently:

- (a) all case records in conservatorship, trusts and estate administration; and
- (b) all orders and judgments in equity.

(4) Superior Court. The following shall be retained permanently:

- (a) all case records filed before 1860;
- (b) all case records filed in Barnstable, Dukes, Essex, and Nantucket counties before 2000; and
- (c) for time periods in which any case records in a particular courthouse are missing or substantially damaged, all other case records from that time period at that courthouse.

#### Section 4. Retention Periods for Certain Non-Permanent Case Records in the Probate and Family Court Department.

A. The following shall be retained for 20 years:

- (1) all case records in divorce or annulment actions except for judgments, which must be retained permanently;
- (2) all case records in complaints filed pursuant to G. L. c. 208 and G. L. c. 209C except for acknowledgements and agreements which must be retained permanently; and

(3) all case records in equity matters other than orders and judgments which must be retained permanently.

B. The following shall be retained for 10 years after final disposition or allowance of the accounts, whichever is later, and then may be destroyed without the need to sample under Section 6:

(1) guardian ad litem reports and reports of the office of the commissioner of probation pursuant to G.L. c. 276, § 85B;

(2) fiduciary account subsidiary schedules, but not cover pages; and

(3) financial statements under Supplemental Probate and Family Court Rule 401.

C. The following shall apply to records in guardianship proceedings:

(1) case records regarding the guardianship of a minor pursuant to G. L. c. 190B, § 5-204 shall be retained for at least 10 years or until the minor has reached the age of 20, whichever is the later date; and

(2) case records regarding the guardianship of an incapacitated person pursuant to G. L. c. 190B, § 5-303 shall be retained for at least 10 years or until 5 years after the incapacitated person's death, whichever is the later date.

Section 5. Retention Periods for Certain Non-Permanent Case Records in the Juvenile Court Department. All case records filed in or relating to a care and protection case filed pursuant to G. L. c. 119, § 24, or to matters where the Department of Children and Families has responsibility pursuant to G. L. c. 119, § 23(f) shall be retained for at least 10 years, or until the youngest child or young adult named on the petition has reached the age of twenty-two, whichever is the later date.

Section 6. Sampling of Case Records. Case records not required to be retained pursuant to Section 3 may be sampled in accordance with an Order issued by the Supreme Judicial Court. The Order shall set forth the sampling requirements for case records in all the departments of the Trial Court.

Section 7. Destruction of Case Records.

A. Case records not required to be retained pursuant to Section 3 may be destroyed ten years after final disposition of a case provided that:

(1) unless this rule states that sampling is not necessary, a sample pursuant to Section 6 has been retained;

(2) the clerk certifies to the appropriate Chief Justice that the dockets for any case records to be destroyed contain essential information including:

(a) entries indicating that a party was represented by counsel or waived counsel pursuant to S.J.C. Rule 3:10 in cases where counsel is required; and

(b) in civil cases, information sufficient to permit execution on a judgment within twenty years after the date of the judgment.

(3) in any criminal case in which a defendant has been sentenced to more than ten years' imprisonment, the case records shall be retained for the period of time that the defendant remains in the custody of the Commonwealth or under parole or probation supervision in connection with that case;

(4) transcripts in cases not decided by the Supreme Judicial Court may be destroyed ten years after final disposition of a case without the need to sample under Section 6; and

(5) sealed case records not otherwise required to be retained by this rule may be destroyed 100 years after final disposition of the case.

B. Notice. At least thirty days before destroying case records, the clerk shall give public notice that case records are proposed to be destroyed pursuant to this rule. The notice shall identify the types of cases and the beginning and ending dates of the cases to be destroyed (e.g. civil cases, 1900 through 1950). The Record Management Coordinator of the Trial Court (RMC) shall give such notice for any records under the RMC's custody.

(1) Before publication, the notice shall be approved by the appropriate clerk, the appropriate Chief Justice and the first justice of the division, if any, in which the case records are stored. The clerk or RMC shall send a copy of the notice to the Chief Justices of the Supreme Judicial Court and of the Trial Court.

(2) Notice shall be posted on the court's website or in a manner to be determined by the Chief Justice of the Trial Court, or, in the appellate courts, by the appropriate Chief Justice.

C. Court Order. No case records shall be destroyed in the Land Court, Probate and Family Court or Superior Court without an order of the Chief Justice of the appropriate court. No case records shall be destroyed in the Boston Municipal Court, District Court, Juvenile Court or Housing Court without an order, approved by the Chief Justice of the department and the first justice of the division where the records are stored. Before destroying any records, the clerk

or RMC shall notify the appropriate Chief Justice of any responses received as a result of the publication of the notice.

D. Exceptions.

- (1) Discretion to preserve case records. A Chief Justice or clerk may exercise discretion at any time to retain any case records under the clerk's custody even if such records could be destroyed under this rule.
- (2) Excess papers. Regardless of other provisions of this rule, a clerk may destroy any excess case records, such as transmittal letters and duplicate copies.

Section 8. Digital Storage.

A. With the exception of the case records listed in Section 8B, all case records subject to retention under this rule may be destroyed once the case record has been converted to, and stored in, a PDF-A format or in another archival digital format which has been approved by the Supreme Judicial Court.

B. The following case records shall be retained in their original form even if electronic copies are available:

- (1) any original paper dated or known to have been filed before the year 1800;
- (2) all case records created prior to 1900;
- (3) all wills, case records filed in or relating to an adoption filed pursuant to G. L. c. 210, a name change filed pursuant to G. L. c. 210 §12, or the establishment of paternity pursuant to G. L. c. 209C;
- (4) all dockets and extended records; and
- (5) any other paper or record designated for retention by the Chief Justice of the Trial Court, or, in the appellate courts, by the appropriate chief justice.

C. Section 8A shall take effect in the Trial Court after the Court Administrator and Chief Justice of the Trial Court determine that the Trial Court has adopted adequate policies and procedures to permanently protect case records stored in PDF-A format or any other approved archival digital format. In the appellate courts, such determination shall be made by the appropriate chief justice. Re-determination shall occur at least every five years and before any new archival digital format is used.