

JUDICIAL COUNCIL OF CALIFORNIA

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INVITATION TO COMMENT

SPR15-09

Title	Action Requested
Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings	Review and submit comments by June 17, 2015
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 3.1350 and 3.1354	January 1, 2016
Proposed by	Contact
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Appellate Advisory Committee	
Hon. Raymond J. Ikola, Chair	

Executive Summary and Origin

To reduce the amount of immaterial facts and evidence that are presented in motions for summary judgment, the Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) (collectively advisory committees) recommend that the California Rules of Court relating to summary judgment motions be amended. Specifically, rule 3.1350 would be amended to define “material facts” and clarify that the separate statement of undisputed material facts in support of or in opposition to a motion for summary judgment should include only material facts and not background facts or other facts that are not pertinent to the disposition of the motion. In addition, rule 3.1354 would be amended to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

The suggestion that led to this proposal originated with the Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue (ad hoc committee).

Background

In spring 2012, the ad hoc committee proposed amending Code of Civil Procedure section 437c to limit the requirement that the court rule on objections to evidence in summary judgment

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 These proposals are circulated for comment purposes only.

proceedings.¹ The proposal, which is intended to reduce the time and expense of these proceedings, would have added to subdivision (g) the following: “The court need rule only on those objections to evidence, if any, on which the court relies in determining whether a triable issue exists.” In support of this amendment, the ad hoc committee stated, in part, as follows:

Motions for summary judgment are some of the most time consuming pretrial matters that civil courts handle. Judges may spend hours ruling on evidentiary objections for a single summary judgment motion. Frequently, the number of objections that pertain to evidence on which a court relies in determining whether a triable issue of fact exists is a small subset of the total number of objections made by the parties. Substantial research attorney and judicial time would be saved by the proposed amendment, thus allowing the trial courts to handle other motions more promptly.

The proposal was referred to the CSCAC, which determined that it would be helpful to work with the AAC on this issue. Through a joint subcommittee, the advisory committees developed this rule proposal and a companion proposal to amend Code of Civil Procedure section 437c.²

The Proposal

This proposal and the related proposal to amend Code of Civil Procedure section 437c are intended to reduce burdens on trial courts associated with evidentiary objections in summary judgment proceedings, without resulting in a corresponding negative impact on the appellate courts. Although the courts have not collected comprehensive data on the time and resources expended in ruling on objections to evidence offered in support of or opposition to summary judgment motions, anecdotal reports from advisory committee members (both judges and attorneys) indicate that they are substantial. Advisory committee members state that many objections are unnecessary and there is no need for rulings on those objections. Published opinions illustrate the large number of objections made in summary judgment papers and the huge volume of motion papers overall: “We recognize that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objection, without focusing on those that are critical [footnote omitted].” (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532.) In one reported case, the moving papers in support of summary judgment totaled 1,056 pages. The plaintiff’s opposition was nearly three times as long and included 47 objections to evidence, and the defendants’ reply included 764 objections to evidence. (*Nazir v. United Airlines, Inc.* (2009) 178 Cal.App.4th 243, 249, 250–251, and 254.)

¹ This proposal was reiterated by the Trial Court Efficiencies Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees in October 2012.

² The legislative proposal has circulated for comment, was approved by the Judicial Council for sponsorship, and with slight modifications is contained in Senate Bill 470. It would provide in subdivision (d) that the court need rule only on those objections to evidence that is material to the disposition of the summary judgment motion and that objections not ruled on are preserved on appeal.

Until the Supreme Court issued its opinion in *Reid v. Google, Inc.*, *supra*, the effect of a trial court’s failure to rule on evidentiary objections that were properly presented was unclear. Some Courts of Appeal had held that objections made in writing were waived if not raised by the objector at the hearing and ruled on by the court.³ In *Reid, supra*, at 531–532, the court disapproved this prior case law as well as its own prior opinions⁴ to the extent they held that the failure of the trial court to rule on objections to summary judgment evidence waived those objections on appeal.

The court also held that the trial court must expressly rule on properly presented evidentiary objections, disapproving a contrary procedure outlined in *Biljac Assocs. v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419–1420. Thus, under *Reid v. Google*, evidentiary objections made in writing or orally at the hearing are deemed “made at the hearing” under section 437c(b)(5) and (d), they must be ruled on by the trial court, and, if not ruled on by the trial court, are presumed to have been overruled and are preserved for appeal. “[I]f the trial court fails to rule expressly on specific evidentiary objections, it is presumed that the objections have been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objections are preserved on appeal.” (*Reid, supra*, at p. 534.) The Supreme Court declined to address the standard of review that would apply to objections that were presumed to have been overruled, stating, “[W]e need not decide generally whether a trial court’s rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo.” (*Id.* at p. 535.)

The *Reid* court recognized “that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical. [Footnote omitted.] Trial courts are often faced with ‘innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become.’ [Citation omitted.]” (*Reid v. Google, Inc., supra*, at p. 532.) The Supreme Court proposed a solution: “To counter that disturbing trend, we encourage parties to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion. In other words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or formal sanctions for engaging in abusive practices.” (*Ibid.*)

Rule 3.1350. To encourage attorneys to raise only objections to evidence truly in dispute, rule 3.1350 of the California Rules of Court would be amended to define “material facts” as “facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is subject to the motion and that could make a difference in the disposition of the motion” and provide that the separate statements in support of and opposition to summary judgment should include only material facts. The definition is based on *L.A. Nat. Bank v. Bank of Canton* (1991)

³ For example, *Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 369 and *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 711.

⁴ *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn. 1 and *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1186, fn. 1.

229 Cal.App.3d 1267, 1274, in which the court stated, “In order to prevent the imposition of a summary judgment, the disputed facts must be ‘material,’ i.e., relate to a claim or defense in issue which could make a difference in the outcome.” The committees defined “material facts” to clarify that the facts to be included in a separate statement are those that show whether there is a triable issue under the statute.

In addition to the definition, the rule would be amended to provide that the separate statements in support of and opposition to summary judgment should contain only material facts and not background facts or other facts that are not pertinent to the court’s disposition of the motion. Specifically, subdivision (d) would be amended to add the following provision:

- (2) The separate statement should include only material facts and not background facts or other facts that are not pertinent to the disposition of the motion.

Subdivision (f) would be amended to add the following:

- (3) If the opposing party contends that additional material facts are disputed, those facts must be set forth in the separate statement. The separate statement should include only material facts and not background facts or other facts that are not pertinent to the disposition of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

If the facts and supporting evidence included in the separate statements are limited to material facts – facts that are pertinent to the disposition of the motion – objections to the evidence should similarly be limited, which would further the goals of the proposal. The committees expect that these changes will clarify for attorneys filing and opposing summary judgment motions that their separate statements should address only facts claimed to be without dispute that are pertinent to the court’s decision on the motion. An advisory committee comment to the rule would reiterate this and cite to *L.A. Nat. Bank, supra*, and *Reid, supra*. It would state:

Subdivision (a)(2). This definition is derived from statements in *L.A. Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274 (“In order to prevent the imposition of a summary judgment, the disputed facts must be ‘material,’ i.e., relate to a claim or defense in issue which could make a difference in the outcome.”) and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533. (Parties are encouraged “to raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion.”)

Subdivisions (d)(2) and (f)(3). Consistent with *Reid, supra*, these provisions are intended to eliminate from separate statements facts that are not material, and, thereby reduce the number of unnecessary objections to evidence.

Rule 3.1354. Rule 3.1354 of the California Rules of Court would be amended to require that objections on specific evidence be referenced by the objection number in a column of the separate statement in opposition or reply to a motion. Currently, the rule provides that objections on specific evidence *may* be referenced in this manner.

The rule would also be amended to eliminate one particular example of an objection to evidence. The example is an objection on relevance grounds to evidence that is not pertinent to a decision on the motion. The advisory committees believe that having this example in the rule may be encouraging attorneys to list evidence in their separate statements that is not pertinent to a decision on the motion for summary judgment, thereby resulting in unnecessary objections to the evidence and increasing the total number of evidentiary objections.

These changes are intended to reduce the number of unnecessary objections and the need to rule on all objections—even those not material to disposition of the summary judgment motion—and to result in significant reduction of time spent by trial court research attorneys and judges, without causing a significant increase in appellate court time. With fewer evidentiary objections made and the amendment of Code of Civil Procedure section 437c to provide that in deciding a motion for summary judgment the court need rule only on objections to evidence that is material to the disposition of the summary judgment motion, the proposal should not have a significantly negative impact on appellate courts.

Alternatives Considered

The advisory committees considered proposing the amendment of only rule 3.1350, but concluded that also amending rule 3.1354 and Code of Civil Procedure section 437c would better achieve the goals of reducing unnecessary evidentiary objections in summary judgment proceedings and the need for rulings on all evidentiary objections. The advisory committees believe that education of the bar would be a necessary component for courts to reap the most benefits from the proposed changes, but do not believe education alone would be sufficient to achieve the desired goals.

Implementation Requirements, Costs, and Operational Impacts

The proposal is expected to benefit the judicial branch, especially superior courts, by reducing the time that must be spent in deciding summary judgment motions.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committees are interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would education of the bar be useful in fully realizing the benefits of this proposal?

The advisory committees also seek 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?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?

Attachments

Cal. Rules of Court, rules 3.1350 and 3.1354, at pages 7–11

Rules 3.1350 and 3.1354 of the California Rules of Court would be amended, effective January 1, 2016, to read:

1 **Rule 3.1350. Motion for summary judgment or summary adjudication**

2
3 **(a) Motion Definitions**

4
5 As used in this rule:

6
7 (1) “Motion” refers to either a motion for summary judgment or a motion for
8 summary adjudication.

9
10 (2) “Material facts” are facts that relate to the cause of action, claim for damages,
11 issue of duty, or affirmative defense that is the subject of the motion and that
12 could make a difference in the disposition of the motion.

13
14 **(b)–(c) * * ***

15
16 **(d) Separate statement in support of motion**

17
18 (1) The Separate Statement of Undisputed Material Facts in support of a motion
19 must separately identify:

20
21 (A) Each cause of action, claim for damages, issue of duty, or affirmative
22 defense; that is the subject of the motion; and

23
24 (B) Each supporting material fact claimed to be without dispute with
25 respect to the cause of action, claim for damages, issue of duty, or
26 affirmative defense that is the subject of the motion.

27
28 (2) The separate statement should include only material facts and not
29 background facts or other facts that are not pertinent to the disposition of the
30 motion.

31
32 (3) The separate statement must be in a the two-column format, specified in (h).
33 The statement must state in numerical sequence the undisputed material facts
34 in the first column followed by the evidence that establishes those undisputed
35 facts in that same column. Citation to the evidence in support of each
36 material fact must include reference to the exhibit, title, page, and line
37 numbers.

38
39 **(e) Documents in opposition to motion**

40
41 Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the
42 opposition to a motion must consist of the following documents, separately stapled
43 and titled as shown:

44
45 (1) [*Opposing party’s*] memorandum in opposition to [*moving party’s*] motion
46 for summary judgment or summary adjudication or both;

- 1 (2) [*Opposing party's*] separate statement of undisputed material facts in
2 opposition to [*moving party's*] motion for summary judgment or summary
3 adjudication or both;
4
5 (3) [*Opposing party's*] evidence in opposition to [*moving party's*] motion for
6 summary judgment or summary adjudication or both (if appropriate); and
7
8 (4) [*Opposing party's*] request for judicial notice in opposition to [*moving*
9 *party's*] motion for summary judgment or summary adjudication or both (if
10 appropriate).

11
12 (f) **Opposition to Motion; Content of separate statement in opposition to motion**

13
14 The Separate Statement in Opposition to Motion must be in the two-column format
15 specified in (h).

- 16
17 (1) Each material fact claimed by the moving party to be undisputed must be set
18 out verbatim on the left side of the page, below which must be set out the
19 evidence said by the moving party to establish that fact, complete with the
20 moving party's references to exhibits.
21
22 (2) On the right side of the page, directly opposite the recitation of the moving
23 party's statement of material facts and supporting evidence, the response
24 must unequivocally state whether that fact is "disputed" or "undisputed." An
25 opposing party who contends that a fact is disputed must state, on the right
26 side of the page directly opposite the fact in dispute, the nature of the dispute
27 and describe the evidence that supports the position that the fact is
28 controverted. That evidence must be supported by citation to exhibit, title,
29 page, and line numbers ~~in the evidence submitted~~.
30
31 (3) If the opposing party contends that additional material facts are disputed,
32 those facts must be set forth in the separate statement.

33
34 The separate statement should include only material facts and not
35 background facts or other facts that are not pertinent to the disposition of the
36 motion. Each fact must be followed by the evidence that establishes the fact.
37 Citation to the evidence in support of each material fact must include
38 reference to the exhibit, title, page, and line numbers.

39
40 (g)-(i) * * *

41
42 **Advisory Committee Comment**

43
44 Subdivision (a)(2). This definition is derived from statements in *L.A. Nat. Bank v. Bank of Canton*
45 (1991) 229 Cal.App.3d 1267, 1274 ("In order to prevent the imposition of a summary judgment,
46 the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a
47 difference in the outcome.") and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532-533 (Parties are

1 encouraged “to raise only meritorious objections to items of evidence that are legitimately in
2 dispute and pertinent to the disposition of the summary judgment motion.”)
3

4 Subdivisions (d)(2) and (f)(3). Consistent with *Reid, supra*, these provisions are intended to
5 eliminate from separate statements facts that are not material and thereby reduce the number of
6 unnecessary objections to evidence.
7

8 **Rule 3.1354. Written objections to evidence**
9

10 (a) * * *

11
12 (b) **Format of objections**
13

14 All written objections to evidence must be served and filed separately from the
15 other papers in support of or in opposition to the motion. Objections on specific
16 evidence ~~may~~ must be referenced by the objection number in the right column of a
17 separate statement in opposition or reply to a motion, but the objections must not be
18 restated or reargued in the separate statement. Each written objection must be
19 numbered consecutively and must:

- 20
21 (1) Identify the name of the document in which the specific material objected to
22 is located;
23
24 (2) State the exhibit, title, page, and line number of the material objected to;
25
26 (3) Quote or set forth the objectionable statement or material; and
27
28 (4) State the grounds for each objection to that statement or material.
29

30 Written objections to evidence must follow one of the following two formats:
31

32 *(First Format):*

33 **Objections to Jackson Declaration**
34

35 **Objection Number 1**
36

37 “Johnson told me that no widgets were ever received.” (Jackson declaration, page 3, lines
38 7–8.)
39

40 **Grounds for Objection 1:** Hearsay (Evid. Code, § 1200); lack of personal knowledge
41 (Evid. Code, § 702(a)).
42

43 **Objection Number 2**
44

45 ~~“A lot of people find widgets to be very useful.” (Jackson declaration, page 17, line 5.)~~
46

47 ~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~

1 (Second Format):

2

Objections to Jackson Declaration

3

Material Objected to:	Grounds for Objection:
1. Jackson declaration, page 3, lines 7–8: “Johnson told me that no widgets were ever received.”	Hearsay (Evid. Code, §1200); lack of personal knowledge (Evid. Code, § 702(a)).
2. Jackson declaration, page 17, line 5: “A lot of people find widgets to be very useful.”	Irrelevant (Evid. Code, §§ 210, 350–351).

4

(c) Proposed order

5

6

7

8

9

10

11

A party submitting written objections to evidence must submit with the objections a proposed order. The proposed order must include places for the court to indicate whether it has sustained or overruled each objection. It must also include a place for the signature of the judge. The proposed order must be in one of the following two formats:

12

(First Format):

13

Objections to Jackson Declaration

14

15

Objection Number 1

16

17

“Johnson told me that no widgets were ever received.” (Jackson declaration, page 3, lines 7–8.)

18

19

20

Grounds for Objection 1: Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).

21

22

Court’s Ruling on Objection 1:	Sustained: _____ Overruled: _____
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23

24

Objection Number 2

25

26

~~“A lot of people find widgets to be very useful.” (Jackson declaration, page 17, line 5.)~~

27

28

~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~

29

Court’s Ruling on Objection 2:	Sustained: _____ Overruled: _____
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30

31

(Second Format):

1
2

Objections to Jackson Declaration

Material Objected to:	Grounds for Objection:	Ruling on the Objection
1. Jackson declaration, page 3, lines 7-8: "Johnson told me that no widgets were ever received."	Hearsay (Evid. Code, § 1200); lack of personal knowledge (Evid. Code, § 702(a)).	Sustained: _____ Overruled: _____
2. Jackson declaration, page 17, line 5: "A lot of people find widgets to be very useful."	Irrelevant (Evid. Code, §§210, 350-351).	Sustained: _____ Overruled: _____
Date:	_____	_____ Judge