

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Uniform Rules Subcommittee, Hon. Brian R. Van Camp, Chair
Patrick O'Donnell, Committee Counsel, 415-865-7665,
patrick.o'donnell@jud.ca.gov

DATE: October 6, 2006

SUBJECT: Written Objections to Evidence in Summary Judgment Motions
(amend Cal. Rules of Court, rule 3.1354) (Action Required)¹

Issue Statement

Currently, a rule in the California Rules of Court prescribes the method for making written objections to evidence in support of or in opposition to a motion for summary judgment. However, the rule does not specify the format for objections and does not require that written objection be made in a separate document. In addition, the rule does not provide for a proposed order that the court may use to indicate its rulings on each evidentiary objection raised.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2007, amend rule 3.1354 to specify the format of written objections to evidence in summary judgment and summary adjudication motions and to require the objecting party to provide a proposed order for ruling on the objections.

The text of amended rule 3.1354 is attached at pages 4–6.

¹ At the June 30, 2006 meeting, the Judicial Council approved the reorganization and renumbering of the California Rules of Court and the Standards of Judicial Administration, effective January 1, 2007. Under the reorganization, rule 345, on written objections to evidence in summary judgment motions, has been renumbered as rule 3.1354 and has been reformatted. Hence, the proposed amendments to rule 345 that were circulated for comment are shown here as amendments to rule 3.1354, which will become effective January 1, 2007. Also, current rule 342, which also will be renumbered effective January 1, 2007, is referred to as rule 3.1350, its new number.

Rationale for Recommendation

Written objections to evidence in support of and in opposition to motions for summary judgment and summary adjudication are often made in an unclear manner and are served and filed very near the hearing date. Sometimes the objections are combined with the separate statement required by rule 3.1350.

The proposed amendments to the rule on written evidentiary objections are intended to improve the rule in several respects. First, the rule would be amended to change the time for serving and filing objections from 4:30 p.m. on the third court day before the hearing to the same time that the objecting party's opposition or reply papers are served and filed. (See amended rule 3.1354(a).) This will give both courts and the parties more time to carefully consider all objections.

Second, the amended rule would require that written objections to specific evidence may be referenced in the separate statement, but the objections may not be restated or reargued in the separate statement. (See amended rule 3.1354(b).)

Third, the rule would prescribe two alternative formats for presenting written evidentiary objections. (See amended rule 3.1354(b).) All evidentiary objections must be in one of the two formats.

Finally, the amended rule would require that a proposed order be submitted with the written objections. (See amended rule 3.1354(c).) The proposed order must use one of the two formats specified for written objections and must include spaces for the court to indicate whether each objection has been sustained or overruled. The order must also include a place for the signature of the judge.

The amendments to the rule are intended to improve the process by which litigants make written objections on motions for summary judgment and summary adjudication. They should also make it easier for trial courts to consider and rule on objections and for appellate courts to review the rulings on objections.

Alternative Actions Considered

The rule might be left unchanged, but this would leave uncertainty regarding the proper format for evidentiary objections.

Comments From Interested Parties

The proposal was circulated for comment in spring 2006. Twenty-two comments were received. The commentators included an appellate justice, judges, court administrators, private attorneys, court research attorneys, the State Bar's Committee on Administration of Justice, and California Defense Counsel. A chart summarizing the comments and the committee's responses is attached at pages

7–19. Based on the comments, the committee recommends several further modifications to the rule.

First, the rule should be revised to permit a party to include a reference to an evidentiary objection in a separate statement but not the full objection. The rule as circulated would have required all objections to be presented in a separate document and would not have permitted their inclusion in the separate statement. However, public comments were invited on whether, though evidentiary objections themselves would not be permitted to be included in the separate statement, the separate statement should be permitted or required to include references identifying any applicable objections contained in the separate document stating the objections. Based on the comments, the committee agreed that the proposed second sentence in subdivision (b), which stated, “Those objections may not be included in the separate statement,” should be deleted. Instead, a new sentence should be added, stating, “Objections on specific evidence may be referenced by the objection number in the right column of a separate statement in opposition or reply to a motion, but the objections must not be restated or reargued in the separate statement.”

Second, based on the comments, the third sentence of subdivision (b) should be revised to include the phrase that each written objection “must be numbered consecutively....”

Third, subdivision (b)(4) should be revised to contain the following underlined language: “State the grounds, including legal authority, for each objection to that statement or material.”

Finally, the committee considered several comments recommending that the rule require separate rulings on each of multiple objections to a single item of evidence. It concluded that, on balance, it is preferable not to require multiple rulings. If the evidence is permitted on a motion for summary judgment, in effect all of the objections were overruled. If the evidence is excluded, it does not matter, in terms of the trial court’s ruling on summary judgment, whether it was objectionable on one or more grounds. On appeal, the appellate court will have to consider each of the grounds asserted whether or not the trial court has separately ruled. Furthermore, in many instances the evidentiary rulings may be immaterial to the outcome—for example, if certain evidence in opposition to a motion is excluded, but the motion is denied anyway.

Implementation Requirements and Costs

This rule change should not require any significant changes in the requirements relating to objections nor impose any significant new costs.

Attachments

Rule 3.1354 of the California Rules of Court is amended, effective January 1, 2007, to read:²

1 **Rule 3.1354. Written objections to evidence**

2
3 **(a) ~~Form of written objections~~**

4
5 ~~A written objection to evidence in support of or in opposition to a motion for~~
6 ~~summary judgment must state:~~

- 7
8 (1) ~~The page and line number of the document to which objection is made;~~
9 ~~and~~
10
11 (2) ~~State the ground of objection with the same specificity as a motion to~~
12 ~~strike evidence made at trial.~~

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14 **(b)(a) Time for filing and service of objections**

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16 Unless otherwise excused by the court on a showing of good cause, all
17 written objections to evidence in support of or in opposition to a motion for
18 summary judgment or summary adjudication must be filed and served and
19 filed no later than 4:30 p.m. on the third court day before the hearing at the
20 same time as the objecting party's opposition or reply papers are served and
21 filed.

22
23 **(b) Format of objections**

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25 All written objections to evidence must be served and filed separately from
26 the other papers in support of or in opposition to the motion. Objections on
27 specific evidence may be referenced by the objection number in the right
28 column of a separate statement in opposition or reply to a motion, but the
29 objections must not be restated or reargued in the separate statement. Each
30 written objection must be numbered consecutively and must:

- 31
32 (1) Identify the name of the document in which the specific material
33 objected to is located;
34
35 (2) State the exhibit, title, page, and line number of the material objected to;

36
37
38 ² These recommended amendments are made to the version of this rule adopted by the Judicial Council at
39 its June 30, 2006 meeting and reflect the text that will be in effect on January 1, 2007. The amendments
40 adopted as part of this proposal will be incorporated into the text of the rule that goes into effect on January
41 1, 2007.

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(First Format):

Objections to Jackson Declaration

Objection Number 1

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

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

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

Objection Number 2

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

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

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

(Second Format):

Objections to Jackson Declaration

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

Date: _____ Judge _____

SPR06-19
Written Objections to Evidence in Summary Judgment Motions
(amend Cal. Rules of Court, rule 3.1354 [formerly rule 345])

	Commentator	Position	Comment on behalf of group?	Comment	Committee Response
1.	Hon. Ronald L. Bauer Chair Rules & Forms Committee Superior Court of California, County of Orange	AM	Y	The proposed formats should provide a method for distinguishing between rulings when sustaining multiple objections to the same item of evidence. For example, when the objections are on the grounds of hearsay and lack of personal knowledge, simply checking off “sustained” does not inform us whether both objections were sustained or just one of them.	The committee disagreed for the reasons stated in the report.
2.	Committee on Administration of Justice The State Bar of California San Francisco	AM	Y	The following comments are directed at the proposed amendments to rule 3.1354 (formerly rule 345): <ul style="list-style-type: none"> • <u>Timing of the objections</u> <p>CAJ supports the proposed amendments to rule 3.1354 (formerly rule 345) that would change the time for serving and filing written objections to evidence....</p> <p>On balance, ...CAJ believes the proposed change will be beneficial by providing courts and parties with more time to consider objections to evidence.</p> <ul style="list-style-type: none"> • <u>Prohibition against including evidentiary objections in the separate</u> 	The committee agreed. <ul style="list-style-type: none"> • <u>Prohibition against including evidentiary objections in the</u>

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				<p style="text-align: center;"><u>statement</u></p> <p>CAJ supports the requirements of proposed rule 3.1354(b) (formerly rule 345(b)), to the extent the rule would require that all written objections to evidence be presented in a separate document. However, in response to the specific request for comments, CAJ is opposed to the prohibition against including those objections in the separate statement. CAJ therefore recommends that the second sentence of the proposed rule be deleted.</p> <p>Including evidentiary objections in a separate statement can facilitate the presentation of a party's case and make it easier for the court to view that party's points and rule on the substance of the motion. CAJ believes that prohibiting a party from including evidentiary objections in a separate statement is unnecessarily restrictive and counterproductive.</p> <ul style="list-style-type: none"> • <u>The proposed format for written evidentiary objections</u> <p>CAJ supports the format of objections in</p>	<p style="text-align: center;"><u>separate statement</u></p> <p>The committee agreed in part. It does not believe that objections should be repeated in the separate statement; however, it has revised subdivision (b) to permit the inclusion of references to the objections in the separate document filed under rule 3.1350 (formerly rule 345).</p> <ul style="list-style-type: none"> • <u>The proposed format for written evidentiary objections</u>

SPR06-19
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				<p>proposed rule 3.1354(b) (formerly rule 345(b)), subject to the following comments.</p> <p>First, the proposed requirement of subdivision (b)(3) to “set forth” the objectionable statement or material is vague. For example, if an entire paragraph in a declaration is objectionable because of a lack of personal knowledge, would the entire paragraph need to be “set forth” verbatim? If so, there would be no difference between “set forth” and “quote.” If not, the meaning of “set forth” is unclear. CAJ recommends that (b)(3) be amended to read: “Quote or set forth <u>describe with specificity</u> the objectionable statement or material.”</p> <p>Second, CAJ believes the rule and examples in the rule should specifically provide that the grounds for each objection must be <u>separately</u> stated and that a place must be provided for the court to provide a <u>separate</u> ruling on each of the grounds.... Requiring specific rulings on each of the grounds for objection will ultimately assist the parties and the courts, and provide a</p>	<p>The committee disagreed. “Describing with specificity” may often not be sufficiently clear.</p> <p>The committee disagreed for the reasons stated in the report.</p>

SPR06-19
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				<p>clear record in the event of appellate review.</p> <ul style="list-style-type: none"> • <u>Deletion of the word “hearing” in rule 3.1354 (formerly rule 345)</u> <p>CAJ raises one additional issue to avoid a potential, unintended consequence.</p> <p>Code of Civil Procedure Section 437c does not contain an explicit grant of a statutory right for oral argument on a summary judgment motion. Nonetheless, several cases addressing the question hold that there is such a right. <i>See</i> Weil and Brown, <i>California Practice Guide, Civil Procedure Before Trial</i> ¶ 10.269.5 (citing <i>Mediterranean Construction Co. v. State Farm Fire & Casualty Co.</i>, 66 Cal.App.4th 257, 259 (1998) and <i>Brannon v. Superior Court (Crippen)</i> 114 Cal.App.4th 1203, 1210). There is also dictum to the contrary. <i>See Jovine v. FHP, Inc.</i>, 64 Cal.App.4th 1506, 1525 (1998) (“We assume without deciding that a party has no absolute right to oral argument on a motion for a summary judgment motion.”).</p>	<ul style="list-style-type: none"> • <u>Deletion of the word “hearing” in rule 3.1354 (formerly rule 345)</u> <p>The amendments to the rule are not intended, in any way, to affect the parties’ right to a hearing. The reference in the current rule to “hearing” is deleted only because it is used to indicate the time for serving and filing objections, which would be changed.</p>

SPR06-19
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				<p>Significantly, cases upholding the right to an oral argument have done so by relying on the reference to a “hearing” in various statute and the rules. For example, in <i>Mediterranean Construction</i>, the Court focused on Section 437c’s language that a “hearing” be held (“[e]videntiary objections not made <i>at the hearing</i> shall be deemed waived”) and concluded that this meant a motion must be “heard” and oral argument be allowed. 66 Cal.App.4th at 259-263. In <i>Brannon</i>, the Court relied on the reference in various rules to a “hearing,” which it interpreted to mean that an oral proceeding takes place. <i>Brannon</i>, 114 Cal.App.4th at 1210.</p> <p>The right to oral argument on a motion for summary judgment is not currently an issue, but the right to oral argument in various contexts has been an issue in the past. CAJ understands that this proposal in no way intends to change the existing state of affairs with respect to that right, but the proposed change in the rule and the proposed change to Code of Civil Procedure Section 437c in the related</p>	<p>As explained above, the deletion of the word “hearing” in rule</p>

SPR06-19
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				legislative proposal would eliminate references to a “hearing.” CAJ recommends that the intent be made clear, possibly by including a comment noting that deletion of the word “hearing” (assuming that happens) is not intended to have any impact on the right to oral argument on a motion for summary judgment.	3.1354 (formerly rule 345) is not intended to affect a party’s right to oral argument on a motion for summary judgment.
3.	Hon. Mary E. Fuller Judge Superior Court of California, County of San Bernardino Rancho Cucamonga	A	N	In conjunction with LEG06-02, this procedure will make the handling of objections easy.	The committee agreed.
4.	Ms. Janet Garcia Manager Planning and Research Unit Superior Court of California, County of Los Angeles Los Angeles	A	N	No comments.	No response required.
5.	Hon. Raymond J. Giordano Judge (Ret.) Santa Rosa	A	N	Good idea.	The committee agreed.
6.	Mr. Clarke Holland Partner LHB Pacific Law Partners Emeryville	A	N	No comments.	No response required.

SPR06-19
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7.	Mr. Thomas M. Holsinger Research Attorney Superior Court of California, County of Stanislaus Modesto	AM	N	All objections by a given side shall be consecutively numbered. The courts rulings on objections may take the form of identifying those sustained or those overruled by their identification number. The court need not use the forms of rulings provided by the parties in ruling on objections. Reason: Document control is a problem. Rulings must be simple, and the courts must be able to use their own internally-generated documents in preparing rulings.	The committee agreed. Subdivision (b) has been modified to clarify that each objection must be consecutively numbered.
8.	Mr. Dennis B. Jones Court Executive Officer Superior Court of California, County of Sacramento Sacramento	A	Y	No comments.	No response required.
9.	Ms. Cheryl Kanatzar Deputy Executive Officer Superior Court of California, County of Ventura	A	N	No comments.	No response required.
10.	Hon. Curtis Karnow Judge Superior Court of California, County of San Francisco	A	N	I agree with the proposed changes. I question two aspects, however. First, the rule does not contemplate the court indicating which of the grounds for an	The committee did not think that the rule needs to require a separate ruling on multiple bases of objections. (See report for

SPR06-19
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	San Francisco			objection is sustained; so that if there are multiple bases for objection and the trial court indicates “sustained,” the appellate court will not know the basis for the ruling. Second, given the detail in the rule generally at the commencement of (b), do we need to literally specify the format? Is there a realistic fear that even when told to do the things in (b) (1)–(5), counsel might yet produce a useless document?	discussion.) Also, setting out the format is useful for litigants.
11.	Hon. Thomas W. Kelly Supervising Civil Judge Superior Court of California, County of Butte Chico	A	N	No comments.	No response required.
12.	Ms. Tressa S. Kentner and Ms. Debra Meyers Executive Officer and Chief of Staff Counsel Services Superior Court of California, County of San Bernardino San Bernardino	AM	N	Agree with the proposal and suggest adding the following: (a) Each objection must be stated separately; and (b) Failure to comply with this rule constitutes a waiver of the objection.	The committee agreed. Disagreed. What constitutes a failure to comply and the appropriate sanction should be left to the discretion of the court.
13.	Hon. William Liebmann	AM	Y	1. The rule should require references to	1. The rule has been modified to

SPR06-19
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	Superior Court of California, County of Ventura Ventura			<p>objections to help the court in determining which facts are supported by admissible evidence.</p> <p>2. Objecting party should be required to specify what is lacking when foundation or authentication objection is made.</p> <p>3. I would like to see a requirement for objections to be in writing and for written reply to objections. This would assist the courts greatly and allow the proponent of the evidence to point out, for example, applicable hearsay exceptions.</p> <p>4. Although it cannot be done by the Rules of Court, I would like to see a change in the time for filing opposition and reply. Under existing rules, reply is due 5 calendar days before hearing. That means that if a hearing is on Wednesday, the reply is due by 5:00 p.m. on Friday. The clerk may file the document late in the day, but not get it to the judge or legal research until the next business day, which would be Monday (best case) or Tuesday (if Monday is a holiday). In light of the 75-day notice requirement, the opposition should be due</p>	<p>permit references to objections, but not their restatement, in separate statements.</p> <p>2. This is outside the scope of this rule on format.</p> <p>3. A separate legislative proposal on this subject is being recommended by the committee.</p> <p>4. This is outside the scope of this rules proposal.</p>

SPR06-19
Written Objections to Evidence in Summary Judgment Motions
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				21 calendar days before and the reply 10 calendar days before. This change would also allow time for written opposition to any evidentiary objections filed with the reply.	
14.	Mr. Wayne Maire President California Defense Counsel Sacramento	A	Y	No comments.	No response required.
15.	Ms. Julie M. McCoy Orange County Bar Association Irvine	AM	N	It is recommended that the separate statement of facts include a reference to any evidentiary objections made on the separate statement of objections, so that the court is aware of them.	The committee agreed. The rule has been modified to permit references.
16.	Ms. Pam Moraida Civil/Small Claims Program Manager Superior Court of California, County of Solano Fairfield	A	N	It would be much clearer if it is presented as proposed.	The committee agreed.
17.	Ronald W. Novotny Attorney Hill, Farrer & Burrill, LLP Los Angeles	A	N	The proposed rule will make it easier for courts to rule on objections in motions for summary judgment, and create a better record on appeal.	The committee agreed.
18.	Ms. Kimberly Ringer Research Attorney	A	N	I believe parties should be permitted to include reference to their objections in	The rule has been modified to permit references.

SPR06-19
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	Superior Court of California, County of Stanislaus Modesto			their separate statements. I wouldn't require it, however.	
19.	Mr. Mike Roddy Executive Officer Superior Court of California, County of San Diego San Diego	A	N	No additional comments.	No response required.
20.	Ms. Iris Stuart Court Operations Manager Superior Court of California, County of Sonoma Santa Rosa	A	N	This will make ruling on objections easier and more uniform.	The committee agreed.
21.	Hon. Paul Turner Presiding Justice Court of Appeal Second Appellate District, Division 5 Los Angeles	AM	N	There is the issue of what happens if the objections are not in the prescribed format. Are they disregarded—the proposed rule does not address that issue. I suggest California Rules of court, rule 3.1354 (formerly rule 345) state either the trial court may not consider written objections not in the prescribed format or has discretion not to do so. Perhaps, there should be a California Rules of Court, rule 3.1354(d), which states, “It shall be a proper ground for overruling a written objection if it is not one of the two formats in subdivision (b).”	The committee did not believe that it is necessary to specify the effects of failure to follow the format.

SPR06-19
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				<p>Any unwarranted harshness in such a requirement is that the party who failed to put the objections in proper format can still seek Code of Civil Procedure section 473 relief from an adverse ruling.</p> <p>In any event, the proposed changes may not solve all of the problems associated with summary judgment objections, but it is an excellent improvement over the present California Rules of Court, rule 345. Approval of the proposed amendments in its present format will genuinely improve rulings on summary judgment motions.</p>	
22.	Hon. John Vander Feer Chair Superior Court of California, County of San Bernardino Civil Cmte Barstow	A	Y	<p>Regarding subdivision (a)(4): “(4) State the ground for each objection to that statement or materials; and....”</p> <p>I am not sure that this language would prompt all attorneys to include a citation to the appropriate authority for the objection. I would suggest something like the following:</p> <p>“(4) State the grounds, <u>including legal authority</u>, for each objection to that</p>	The committee agreed. The underlined phrase has been

SPR06-19
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				<p>statement or materials; and....”</p> <p>Most citations to legal authority will reference the Evidence Code, but there could also be a case citation on an unusual issue.</p> <p>This proposal will be of great assistance to judge in ruling on objections at summary judgments/adjudications. I wholeheartedly endorse it.</p>	<p>added.</p>