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## INVITATION TO COMMENT

### LEG14-02

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Title	Action Requested
Proposed Legislation (Civil Practice and Procedure): Evidentiary Objections in Summary Judgment Proceedings	Review and submit comments by June 18, 2014
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Code Civ. Proc., § 437c	January 1, 2016
Proposed by	Contact
Civil and Small Claims Advisory Committee	Susan R. McMullan, 415-865-7990
Hon. Patricia M. Lucas, Chair	<a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Raymond J. Ikola, Chair	<a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>

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### Executive Summary and Origin

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) (collectively, “advisory committees”) recommend that Code of Civil Procedure section 437c be amended, effective January 1, 2016, to provide that in deciding a motion for summary judgment, the court need rule only on objections to evidence that are pertinent to the disposition of the summary judgment motion. The suggestion that led to this proposal originated with Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue (Ad Hoc Committee). The text of the proposed amendments to Code of Civil Procedure section 437c is attached at page 5.

### Background

In spring 2012, the Ad Hoc Committee proposed amending section 437c of the Code of Civil Procedure to limit the requirement that the court rule on objections to evidence.<sup>1</sup> The proposal, which is intended to reduce the time and expense of court proceedings, would have added the following to subdivision (g) of that section : “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:

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<sup>1</sup> 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.

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 legislative proposal.

### **The Proposal**

This proposal is 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. Some advisory committee members state that many objections are unnecessary and that 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 objections, 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, 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.)

Until the Supreme Court issued its opinion in *Reid*, 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.<sup>2</sup> In *Reid*, at pages 531–532, the court disapproved this prior case law as well as its own prior opinions<sup>3</sup> 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.

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<sup>2</sup>See e.g., *Charisma R. v. Kristina S.* (2009) 175 Cal.App.4th 361, 369; *Jones v. P.S. Development Co., Inc.* (2008) 166 Cal.App.4th 707, 711.

<sup>3</sup>*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 670, fn.1; *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1186, fn.1.

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*, evidentiary objections made in writing or orally at the hearing are deemed “made at the hearing” under section 437c(b)(5) and (d), 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*, 50 Cal.4th 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*, 50 Cal.4th 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.*)

To reduce the burden on trial courts in ruling on numerous objections to evidence in summary judgment proceedings, Code of Civil Procedure section 437c would be amended by adding a sentence to subdivision (c) that provides a court need rule only on objections to evidence that is pertinent to the disposition of the summary judgment motion. Subdivision (c) currently states that in determining whether there is no triable issue as to any material fact, “the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court.” With the proposed amendment, a court would no longer need to rule on all evidentiary objections.

### **Alternatives Considered**

The advisory committees considered whether to propose amendment of section 437c by adding a sentence to subdivision (g), using the following language proposed by the Ad Hoc Committee: “The court need rule only on objections to evidence, if any, on which the court relies in determining whether a triable issue exists.” Instead, the advisory committees decided to use the language set out by the Supreme Court in *Reid*: “evidence that is pertinent to disposition of the summary judgment motion.” The advisory committees also decided that the best subdivision in which to place the amendment is subdivision (c), because it is the first place that addresses grounds for granting the motion and rulings on objections to evidence.

## **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 committee is 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**

1. The text of the proposed legislation is attached at page 5.

Section 437c of the Code of Civil Procedure would be amended, effective January 1, 2016, to read as follows:

**(a)–(b) \* \* \***

- (c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. In determining whether the papers show that there is no triable issue as to any material fact the court shall consider all of the evidence set forth in the papers, except that to which objections have been made and sustained by the court, and all inferences reasonably deducible from the evidence, except summary judgment may not be granted by the court based on inferences reasonably deducible from the evidence, if contradicted by other inferences or evidence, which raise a triable issue as to any material fact. The court need rule only on those objections to evidence that is pertinent to the disposition of the summary judgment motion.

**(d)–(u) \* \* \***