JUDICIAL COUNCIL OF CALIFORNIA

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: December 12, 2014

Title
Judicial Council–Sponsored Legislation: Evidentiary Objections in Summary Judgment Proceedings

Rules, Forms, Standards, or Statutes Affected
Amend Code Civ. Proc., § 437c

Recommended by
Policy Coordination and Liaison Committee
Hon. Kenneth K. So, Chair
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Agenda Item Type
Action Required

Effective Date
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Executive Summary

The Policy Coordination and Liaison Committee, Civil and Small Claims Advisory Committee, and the Appellate Advisory Committee (collectively "advisory committees") recommend that the Judicial Council sponsor legislation to amend 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 and that objections not ruled on are preserved on appeal.

Recommendation

The Policy Coordination and Liaison Committee, Civil and Small Claims Advisory Committee, and the Appellate Advisory Committee recommend amending Code of Civil Procedure section 437c to limit the requirement that the court rule on objections to evidence and to provide that objections not ruled on are preserved on appeal.

The text of the proposed amendment to section 437c is attached at page 7.

Previous Council Action

The Judicial Council has adopted several rules addressing summary judgment motions. (Cal. Rules of Court, rules 3.1350–3.1354.). Rules 3.1352 and 3.1354 govern written objections to evidence in summary judgment motions and were adopted by the council effective January 1, 1984.

Rationale for Recommendation

This proposal originated with the Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue (Ad Hoc Committee). 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. That proposal, which was 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:

> 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 Civil and Small Claims Advisory Committee (CSCAC), which determined that it would be helpful to work with the Appellate Advisory Committee (AAC) on this issue. Through a joint subcommittee, the advisory committees developed this legislative 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.[1] In *Reid,* at pages 531–532, the court disapproved this prior case law as well as its own prior opinions[2] 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,* evidentiary objections made in writing or orally at the hearing are deemed "made at the hearing" under section 437c(b)(5) and (d) and 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.)

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*, *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*.)

This proposal

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) providing that a court need rule only on objections to evidence that is material 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

[1]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.

[2]*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.

sustained by the court." With the proposed amendment, a court would no longer need to rule on all evidentiary objections.

On October 2, 2014, the Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee's Joint Legislation Working Group voted to recommend sponsorship of this proposal.

Comments, Alternatives Considered, and Policy Implications

The proposal circulated for public comment from April 18 to June 18, 2014. Eight commentators submitted comments; six agreed with the proposal and two agreed with the proposal if it were modified in ways suggested by the commentator. Commentators included a Court of Appeal, superior courts, a superior court research attorney, and three committees of the State Bar of California.

Commentators that agreed without modifications

The Court of Appeal, Second Appellate District stated that the primary effect of this change will be to curb the excesses in objections noted in *Reid v. Google, Inc., supra,* and other appellate decisions. It commented that a decision on whether an objection is "pertinent" (and therefore decided by the trial court) will have no effect on the handling of the appeal by the reviewing court because under *Reid* if the trial court failed to rule on an objection, it is preserved for appeal.

A research attorney at the Superior Court of Alameda County commented that the proposal reaffirms that only material facts are at issue and only evidence tending to prove or disprove material facts should be made. She went on to state that the court is overwhelmed with work even without having to rule on objections to evidence that, even if sustained, would have no impact on the court's decision. The proposed amendment would reduce this burden on courts.

Two superior courts commented favorably on the time savings that are expected to result from the proposal. After describing a summary judgment motion filed in the Superior Court of San Diego County that included 113 pages of evidentiary objections by one side, that court stated "Quite often it only takes a few documents for the Court to find a triable issue of fact. Ruling on objections to evidence not needed to make that determination is a waste of judicial resources." The Superior Court of Riverside County similarly commented on the significant time and resources to be saved in preparing for the hearing on the summary judgment motion if the proposal were adopted.

Commentators that suggested modifications

The three State Bar committees, though agreeing with the proposal, suggested some changes.[3] All suggested changing the word "pertinent" to "material" in reference to evidence and making clear that objections not ruled on are preserved for appeal. The Committee on Administration of Justice (CAJ) was concerned that the proposed language may create confusion because:

[3]Two of the committees responded that they agreed with the proposal if modified in certain ways. The Rules and Legislation Committee of the Litigation Section stated its agreement with the proposal but also suggested changes.

1. It may be unclear whether the amendment is intended to preserve the balance of the *Reid* opinion concerning no-waiver principles;

2. Parties may ascribe different meanings to the phrase "evidence that is pertinent to the disposition of the summary judgment motion" and references to evidence that is intended to establish the presence or absence of a material fact currently in section 437c;

3. The amendment could be read to conflict with the current requirement in section 437c, subdivision (c) that "the court shall consider all of the evidence set forth in the papers" except that to which an evidentiary objection was sustained; and

4. The amendment's reference to the word "court" could potentially be construed as either the trial or appellate court, thereby suggesting the appellate court need not rule on all evidentiary objections in direct contradiction of *Reid*'s no-waiver principles.

CAJ suggested the following underlined changes to subdivision (c):

> (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 trial court as described herein, 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 trial court need only rule on those objections to evidence supporting or opposing those facts that the court determines are material to its determination of the motion. Objections not ruled upon by the trial court will be deemed overruled and thereby preserved for purposes of appeal.

The CAJ suggested certain changes to avoid ambiguity, track the language of section 437c by using "material" rather than "pertinent," and provide that objections not ruled on are preserved on appeal. With these changes, underlined in the following, the proposal would read:

> The court need rule only on those objections directed to evidence that is ~~pertinent~~ material to the disposition of the summary judgment motion, and any other objections not ruled on are preserved on appeal.

The Rules and Legislation Committee of the Litigation Section similarly suggested that the amendment include a statement that objections not ruled on by the trial court are preserved for appellate review. Some members of the committee suggested that "pertinent" be replaced with "material," as the latter is already used in section 437c and is a common and understood standard in summary judgment. Others thought use of "pertinent" was appropriate.

In response to these comments, the advisory committees modified the proposal to use "material" rather than "pertinent"; the addition to subdivision (c) would therefore read: "The court need rule only on those objections to evidence that is material to its disposition of the summary judgment motion." The committees concluded that using the term "material" in this proposed statutory provision, as suggested by some commentators, rather than "pertinent," would be consistent with the policy goal and intent of the amendment—narrowing the scope of those objections to evidence on which the court must rule—and would rely on a familiar and well-settled standard. In considering this aspect of the proposal, one member of the Civil and Small Claims Advisory Committee (CSCAC) was concerned that the change would have unintended consequences by allowing a court to rule only on objections to evidence that is material to its disposition of the motion, without identifying what the court found to be material to the disposition. He suggested that the proposal require a tentative ruling or identification of what the court determined to be material to its disposition of the motion in advance of the hearing on the motion. Other members noted that neither section 437c nor the rules of court currently require any advance notice and to require this would increase a court's workload. The one member who suggested adding a requirement that a court identify what it determined to be material did not approve the proposal as drafted; the rest of the CSCAC members approved it, as did all members of the Appellate Advisory Committee.

The advisory committees modified the proposal to add a sentence stating that objections not ruled on are preserved on appeal. The advisory committees acknowledge that the proposed amendment providing that the court need not rule on all objections modifies existing law, as current section 437c, subdivision (c) states that "the court shall consider all of the evidence set forth in the papers" except that to which an evidentiary objection was sustained.

The advisory committees decline to add "trial" before "court" in reference to objections that were made and sustained by the court. The committees believe that it is clear that the statute refers to the trial court in all references to "court."

Comments on specific questions

In response to a specific question, one commentator stated that it did not see a need for education of the bar to realize the benefits of the proposal. Another commentator stated that judicial education will alert trial and appellate courts to the change. All commentators that addressed the question answered that two months' time was sufficient to implement the proposal.

Relevant Strategic Plan Goals and Operational Plan Objectives

The recommendations in this report support Strategic Plan Goal III (Modernization of Management and Administration) and Goal IV (Quality of Justice and Service to the Public).

Attachments

1. Proposed amendments to Code Civ. Proc. § 437c, at page 7
2. Chart of comments, LEG14-02, at pages 8–24

Code of Civil Procedure section 437c would be amended, effective January 1, 2016, to read:

(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 material to its disposition of the summary judgment motion. Objections not ruled on are preserved on appeal.

(d)–(t) * * *

LEG14-02

Proposed Legislation (Civil Practice and Procedure): Evidentiary Objections in Summary Judgment Proceedings (amend Code Civ. Proc., § 437c)

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

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District	A	Subdivision (c) of Code of Civil Procedure section 437c would be amended to provide that, in ruling on a motion for summary judgment, the trial court need to rule only on those objections to the evidence that are "pertinent to the disposition of the summary judgment motion." **Comments** 1. We support this proposal. 2. This will not create a new "appellate issue" because under *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, the objection is preserved for appeal if the trial court failed to rule on the objection. A difference of opinion about an objection being "pertinent" will have no effect on the handling of the appeal by the reviewing court. Thus, the primary effect of this change will be to curb the excesses in objections noted in *Reid v. Google, Inc., supra,* and other appellate decisions. 3. The proposal would result in cost savings to litigants by decreasing the amount of time billed framing the objections and then dealing with them. The amount of such savings is unknown and unknowable. 4. Judicial education will alert trial and appellate courts to the rule. 5. 2 months is sufficient time for the	The committees note the agreement with the proposal; no further response is needed.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			implementation of this statutory change.	
2.	Monique G. Morales Research Attorney Superior Court California, County of Alameda	A	Thank you for the opportunity to respond. In my current position as a trial court research attorney, I regularly see 100+ pages of objections to evidence that have no bearing on the motion at issue. I welcome the proposed change because it reaffirms that only material facts are at issue and only [objections to]* evidence tending to prove or disprove material facts should be made. The court is overwhelmed with the amount of work without having to consider objections to evidence that, even if taken as true, would have no impact on the ruling. In making changes to CCP 437c, please also consider making the filing deadline for reply papers five COURT days before the hearing, rather than five calendar days. The current deadline overburdens the court and staff. The deadline for filing oppositions could be extended 2-3 days to offset the new deadline for reply.	This suggestion is beyond the scope of the proposal. The committees will consider it at a future meeting.
3.	Superior Court of California, County of Los Angeles	A	No specific comment.	No response is needed.
4.	Superior Court of California, County of San Diego by Mike Roddy, Executive Officer	A	This change is needed and our court strongly supports the proposal. Our court has had cases where one side alone in a single motion presented ***113 pages*** of evidentiary objections.	The committees note the agreement with the proposal; no further response is needed.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			The objection-abuse practice has become so common place at least one of our courts has added a standardized statement when ruling on motions with pages of evidentiary objections: The Court invites counsel to consider the advice provided by the California Supreme Court: "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. 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) Indeed, the Biljac procedure itself was designed to ease the extreme burden on trial courts when all "too often" "litigants file blunderbuss objections to virtually every item of evidence submitted." (Citations omitted) 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	

	Commentator	Position	Comment	Committee Response
			formal sanctions for engaging in abusive practices. ….” [Reid v. Google, Inc. (2010) 50 Cal.4th 512, 532-33] In another ruling, the following was included: “Instead of making a serious attempt to obtain rulings on meritorious objections, defendant asserts so many non-meritorious objections (e.g., foundation, undue prejudice, confusion, misleading), it calls into question whether defendant is truly interested in evidentiary rulings or if this is an exercise in make-work.” Quite often it only takes a few documents for the Court to find a triable issue of fact. Ruling on objections to evidence not needed to make that determination is a waste of judicial resources.	
5.	Superior Court of Riverside County	A	Strongly agree with proposal. In addition to the comments of the advisory committees in the Invitation to Comment, it should be noted that while the Supreme Court in Reid stated that objections that are not expressly ruled on are deemed overruled, the Court also stated that the trial court had a duty to examine all objections on their merits: “[W]ritten evidentiary objections made before the hearing, as well as oral objections made at the hearing are deemed made “at the hearing” under section 437c, subdivisions (b)(5) and (d). The trial court must rule expressly on those objections. (See Vineyard Springs Estates v. Superior Court, supra, 120 Cal. App. 4th at pp. 642-643	

	Commentator	Position	Comment	Committee Response
			[trial courts have a duty to rule on evidentiary objections presented in prop form].) If the trial court fails to rule, the objections are preserved on appeal." Reid, 50 Cal. App. 4th 512, 531-532 (italics in original, boldface added, footnotes omitted). Many trial court judges thus interpret Reid (and its citation to Vineyard Springs Estates) as holding that each objection must be evaluated on its merits and the trial court judge has an ethical duty to consider and rule on every evidentiary objection made, regardless of whether the evidence is pertinent to the resolution of the motion or not. The holding in Reid that the objections not explicitly ruled on may be presumed to have been overruled (Reid, 50 Cal. App. 4th 512, 534), under this interpretation of Reid, only saves the time at the hearing that would otherwise have been spent expressly stating that the objections are overruled; the preparation of the summary judgment motion before the hearing, and the reviewing the objections and determining whether or not each objection should be sustained or overruled, regardless of whether the evidence is pertinent to the ruling on the motion or not, remains the same. This proposal, by amending §437c to make explicit that a trial court need not consider objections to evidence when the evidence objected to has no bearing on the outcome of the motion, will save significant time and resources in the preparation for the hearing on the summary judgment motion.	

LEG14-02

Proposed Legislation (Civil Practice and Procedure): Evidentiary Objections in Summary Judgment Proceedings (amend Code Civ. Proc., § 437c)

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

	Commentator	Position	Comment	Committee Response
6.	The State Bar of California – Committee on Administration of Justice by Saul Bercovitch, Legislative Counsel	AM	CAJ generally supports an amendment to Code of Civil Procedure section 437c designed to alleviate the burden on trial courts resulting from the directive in *Reid v. Google* (2010) 50 Cal.4th 512, 516, providing that "[a]fter a party objects to evidence, the trial court must then rule on those objections." CAJ remains concerned, however that the language of the proposed amendment that "[t]he court need only rule on those objections to evidence that is pertinent to the disposition of the summary judgment motion" has the potential to create confusion for several reasons. First, while the proposed amendment purports to overrule *Reid* in one respect, it may be unclear whether the amendment is intended to preserve the balance of the opinion concerning no-waiver principles.	The proposal is intended to address the problem of innumerable objections to evidence by providing that those not material to disposition of the motion need not be decided and to be consistent with the *Reid* holding that objections not ruled on are preserved for appeal.
			Second, parties may ascribe, or attempt to ascribe, different meanings to the phrase "evidence that is pertinent to the disposition of the summary judgment motion" and references to evidence that is intended to establish the presence or absence of a material fact currently in section 437c.	The committees have modified the proposal to state that "The court need rule only on those objections to evidence that is material to its disposition of the summary judgment motion." The committees concluded that using the term "material" in this proposed statutory provision, rather than "pertinent," would be consistent with the policy goal and intent of the amendment—narrowing the scope of those objections to evidence on which the court must rule—and would rely on a familiar and well-settled standard.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			Third, the amendment could be read to conflict with the current requirement in section 437c, subdivision (c) that "the court shall consider all of the evidence set forth in the papers" except that to which an evidentiary objection was sustained. The amendment presumes the court has made a pertinence determination before making evidentiary rulings. Such a determination may not be the type of consideration that is contemplated by the statute.	The committees agree that the proposed amendment modifies the obligation of a trial court to rule on all objections.
			Finally, the amendment's reference to the word "court" could potentially be construed as either the trial or appellate court, thereby suggesting the appellate court need not rule on all evidentiary objections in direct contradiction of *Reid*'s no-waiver principles.	The committees believe that it is clear that the statute refers to the trial court in all references to "court."
			For these reasons, the CAJ proposes that section 437c, subdivision (c), be amended as follows: "(c) The motion for summary judgment shall be granted if all the papers submitted show that there is no triable issue as to	The committees modified the proposal to use the word "material" and to provide that objections not ruled on are preserved on appeal. The committees do not believe it necessary to add "trial" before "court."

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	Commentator	Position	Comment	Committee Response
			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 trial court as described herein, 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 trial court need only rule on those objections to evidence supporting or opposing those facts that the court determines are material to its determination of the motion. Objections not ruled upon by the trial court will be deemed overruled and thereby preserved for purposes of appeal." CAJ would also support consideration of a corresponding amendment to the California	The committees will consider this at a future meeting.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

	Commentator	Position	Comment	Committee Response
			Rules of Court to address the concern raised in *Reid* regarding "'innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become'" and "'blunderbuss objections to virtually every item of evidence submitted.'" (*Reid, supra,* 50 Cal.4th at p. 532.) *Reid* further "encourage[d] 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." (*Ibid.*) While the proposed statutory amendment will reduce the burden on trial courts to a certain extent, limiting the ability of parties to make objections to evidence that does not relate to whether a triable issue exists will significantly reduce the trial court's workload in determining a summary judgment motion.	
7.	The State Bar of California – Committee on Appellate Courts by Kira L. Klatchko, Chair	AM	The Committee on Appellate Courts supports the proposed legislation, with modifications to the proposed new sentence that would be added to the end of Code of Civil Procedure Section 437c(c). We understand the proposed amendment is intended to reduce burdens on trial courts associated with evidentiary objections in	

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	Commentator	Position	Comment	Committee Response
			summary judgment proceedings without resulting in a corresponding negative impact on the appellate courts. We agree the burden on the trial courts in ruling on objections to evidence offered in support of or opposition to summary judgment motions can be substantial. We also recognize that in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532, the Supreme Court disapproved prior Court of Appeal decisions that had held that objections made in writing were waived if not raised by the objector at the hearing and ruled on by the court. In addition, the Court disapproved a procedure affirmed in *Biljac Assocs. v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419–1420, whereby the trial court simply stated that it was "disregarding all inadmissible or incompetent evidence," without specifically ruling on any objections. Instead, the Supreme Court held in *Reid* that 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	

	Commentator	Position	Comment	Committee Response
			Cal.4th at p. 534.) We view LEG14-02 as effectively a proposal to codify the *Biljac* approach and legislatively overrule that portion of *Reid* that disapproved *Biljac* and imposed an obligation on trial courts to rule on all evidentiary objections. With that in mind, we propose three modifications to LEG14-02**:** (1) Add "directed" following objections, to avoid the current ambiguity in the proposed language as to whether it is the "objections" or the "evidence" that must be "pertinent to the disposition of the summary judgment motion." (2) Replace "pertinent" with "material" to better track the language of Section 437c. (3) Add "and any other objections not ruled on are preserved on appeal" at the end, to make clear that objections not ruled on are not waived, consistent with the holding in *Reid, supra,* 50 Cal.4th at p. 534. With these modifications, the proposed new sentence would provide: The court need rule only on those objections directed to evidence that is ~~pertinent~~ material to the disposition of the summary judgment motion, and any other objections not ruled on are preserved on appeal. The Committee considered adding the further underlined statement to the clause at the end, to	The committees believe the sentence is clear without the addition of "directed" and decline to make this change. The committees modified the proposal to use the word "material" and to provide that objections not ruled on are preserved on appeal.

	Commentator	Position	Comment	Committee Response
			further track the holding in *Reid*: "and any other objections not ruled on are presumptively overruled and preserved on appeal." After discussion, the addition was not recommended because, under the proposal, the objections not ruled upon are not deemed overruled, but simply not addressed by the trial court, because the evidence to which they are directed is not considered material to the disposition of the motion. In response to the specific questions that are asked, the Committee responds as follows: **Does the proposal appropriately address the stated purpose?** It does address the identified problem of trial courts that are overburdened by voluminous objections, because it relieves the trial court of the obligation under *Reid* to rule on every objection. Our proposed changes are designed to clarify that objections not ruled upon are preserved. **Would education of the bar be useful in fully realizing the benefits of this proposal?** We do not see a strong need for education on the amendment. The need for tighter and more focused objections already exists, even without the proposed change, and good advocates should avoid blunderbuss objections. Thank you for your consideration of our comments.	The committee appreciates the comments on specific questions.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

LEG14-02

Proposed Legislation (Civil Practice and Procedure): Evidentiary Objections in Summary Judgment Proceedings (amend Code Civ. Proc., § 437c)

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

	Commentator	Position	Comment	Committee Response
8.	The State Bar of California – Litigation Section, Rules and Legislation Committee by Reuben A. Ginsburg, Chair	A	The Rules and Legislation Committee of the State Bar of California's Litigation Section (the Committee) has reviewed Invitation to Comment LEG14-02 on Evidentiary Objections in Summary Judgment Proceedings and appreciates the opportunity to submit these comments. 1. *Proposed Revision to Code of Civil Procedure Section 437c, Subdivision (c)* The Committee supports the proposed statutory revision and believes that it appropriately addresses the stated purpose of relieving the trial court of the burden of ruling on all evidentiary objections without increasing the burden on the Court of Appeal. Ruling on all evidentiary objections, as required under current law, can be an onerous, time-consuming task. Relieving the trial court of the burden of ruling on objections to evidence not impacting the granting or denial of the motion will reduce the time required to dispose of a summary judgment motion without impacting the disposition of the motion. The rule from *Reid v. Google* (2010) 50 Cal.4th 512 (*Reid*) allowing the objector to renew evidentiary objections on appeal for de novo review by the appellate court if the trial court failed to expressly rule on them ensures that the objector will not be prejudiced by the trial court's failure to rule, and we believe that the trial court's failure to rule will not significantly increase the burden on the Court of	

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			Appeal. Some members of the Committee are concerned that the language "pertinent to the disposition of the motion" is unfamiliar and may be somewhat uncertain, and would prefer to use some other language. Other members believe that the quoted language is appropriate. 2. *Suggested Additional Revisions* a. *Objections Not Ruled on by the Trial Court Are Preserved for Appellate Review* We would add the following sentence at the end of Code of Civil Procedure section 437c, subdivision (c), after the sentence to be added by the proposal, to explain what happens when the trial court declines to rule on some evidentiary objections as allowed under the proposal: "Objections not ruled on by the trial court are preserved for appellate review." We believe that objections not ruled on by the trial court should be preserved for appellate review. This is the rule from *Reid*, but part of the explanation given for this rule in *Reid* does not fit the situation where the statute authorizes the trial court to decline to rule on some objections. So a clear statement of the rule in the statute seems appropriate.	The committees modified the proposal to use the word "material" and to provide that objections not ruled on are preserved on appeal.

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			Reid stated, "if the trial court fails to expressly rule 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." (50 Cal.4th at p. 534.) But if the revised statute authorizes the trial court to decline to rule on objections to evidence not impacting the disposition of the motion, there will be no reason to presume that the objections were overruled or that the trial court considered the evidence in ruling on the merits. Still, the rule that the objections are preserved for appellate review seems appropriate to avoid any prejudice to the objecting party. b. *The Trial Court Should Specify the Grounds on Which Evidentiary Objections Are Sustained* The Committee would like to suggest consideration of another change in the law regarding rulings on evidentiary objections on summary judgment motions. We suggest that the trial court be required to specify the ground, or grounds, on which an evidentiary objection is sustained. A trial court sustaining an objection to evidence on a summary judgment motion currently need not specify the ground(s) on which the objection	The committee will consider this at a future meeting.

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			is sustained. The two alternative formats of the proposed order required by rule 3.1354(c) of the California Rules of Court provide for the trial court to indicate "Sustained" or "Overruled" as to an objection to a particular item of evidence, but provide no means for the court to indicate the particular ground on which an objection is sustained when an objection is made on multiple grounds. If the trial court does not specify the ground on which an objection is sustained, the appellate court and the parties on appeal have no way of knowing on which of several grounds asserted for a particular objection the trial court sustained the objection. This makes it necessary for the objecting party to argue on appeal against all grounds asserted, even though the trial court actually might have overruled the objection on some of those grounds or failed to rule on some of those grounds. We believe that it would be appropriate and not burdensome for the trial court to expressly specify the ground(s) on which an evidentiary objection is sustained. Particularly if the court is relieved of the burden of ruling on all evidentiary objections, requiring the court to specify the grounds for sustaining any objections that it sustains does not seem onerous and may reduce the burden on the parties on appeal and the Court of Appeal. This requirement could be imposed by (1) modifying the two alternative formats for the required proposed order so as to provide for a ruling on each ground asserted and (2) amending the	

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Proposed Legislation (Civil Practice and Procedure): Evidentiary Objections in Summary Judgment Proceedings (amend Code Civ. Proc., § 437c)

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

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			summary judgment statute and/or the Rules of Court to make it mandatory for the trial court to expressly specify the ground(s) on which an evidentiary ruling is sustained and to use the proposed order or some other written order that so specifies.	

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