JUDICIAL COUNCIL OF CALIFORNIA

TRIAL COURT PRESIDING JUDGES ADVISORY COMMITTEE/
COURT EXECUTIVES ADVISORY COMMITTEE

www.courts.ca.gov/tcpjac.htm
tcpjac@jud.ca.gov

TRIAL COURT PRESIDING JUDGES ADVISORY COMMITTEE/COURT EXECUTIVES ADVISORY COMMITTEE'S JOINT LEGISLATION WORKING GROUP (JLWG) OPEN MEETING AGENDA

Open to the Public (Cal. Rules of Court, rule 10.75(c)(1))
THIS MEETING IS BEING CONDUCTED BY ELECTRONIC MEANS
THIS MEETING IS BEING RECORDED

Date:	Thursday, October 2, 2014
Time:	12:10-1:00 p.m.
Public Call-in Number:	Conference Call Access: 1-877-820-7831, Passcode: 5893917 (Listen Only)

Meeting materials will be posted on the advisory body web page on the California Courts website at least three business days before the meeting.

Agenda items are numbered for identification purposes only and will not necessarily be considered in the indicated order.

I. OPEN MEETING (CAL. RULES OF COURT, RULE 10.75(C)(1))

Call to Order and Roll Call

Approval of Minutes

Approve minutes of the August 7, 2014, Trial Court Presiding Judges Advisory Committee/Court Executives Advisory Committee's Joint Legislation Working Group meeting.

II. PUBLIC COMMENT (CAL. RULES OF COURT, RULE 10.75(K)(2))

Written Comment

In accordance with California Rules of Court, rule 10.75(k)(1), written comments pertaining to any agenda item of a regularly noticed open meeting can be submitted up to one complete business day before the meeting. For this specific meeting, comments should be e-mailed to tcpjac@jud.ca.gov or mailed or delivered to 344 Golden Gate Avenue, San Francisco, CA 94102, attention: Deirdre Benedict. Only written comments received by October 1 at 12:10 p.m. will be provided to advisory body members prior to the start of the meeting.

III. DISCUSSION AND POSSIBLE ACTION ITEMS (ITEMS 1-7)

Item 1

Proposal for Judicial Council-sponsored Legislation: Criminal Procedure—Appeals of the Imposition or Calculation of Fines and Fees under Penal Code section 1237 (Action Required)

The Criminal Law Advisory Committee proposes adding Penal Code section 1237.21 and amending section 1237 to prohibit appeals in felony cases based solely on the grounds of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim to the trial court. This proposal was developed at the request of courts to reduce the burdens associated with formal appeals and resentencing proceedings stemming from a common sentencing error.

This proposal was reviewed by the JLWG on April 17, 2014. JLWG members supported the proposal in concept, but thought the proposal should provide more specific direction on how a defendant first presents the claim in the trial court at the time of sentencing. No formal position was taken.

Presenters: Mr. Arturo Castro Supervising Attorney, Criminal Justice Services, Judicial Council of California, and Ms. Sharon Reilly, Senior Attorney, Governmental Affairs, Judicial Council of California

Item 2

Proposal for Judicial Council-sponsored Legislation: Criminal Justice Realignment—Recalling Sentences under Penal Code section 1170(d)(1) (Action Required)

The Criminal Law Advisory Committee proposes amending Penal Code section 1170(d)(1) to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h). This proposal was developed at the request of criminal law judges to enhance judicial discretion by applying existing recall authority to a new category of felony sentences created by criminal justice realignment.

This proposal was reviewed by the JLWG on April 3, 2014 and JLWG unanimously voted to recommend that the Judicial Council support the proposed legislation.

Presenters: Mr. Castro and Ms. Reilly

Item 3

Proposal for Judicial Council-sponsored Legislation: Sentencing Report Deadlines (Action Required)

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report by the required deadlines.

This proposal was reviewed by the JLWG on April 3, 2014 and JLWG unanimously voted to recommend that the Judicial Council support the proposed legislation.

Presenters: Mr. Castro and Ms. Reilly

Item 4

Proposal for Judicial Council-sponsored Legislation: Criminal and Civil Procedure—Monetary Sanctions under Code of Civil Procedure section 177.5 (Action Required)

The Criminal Law Advisory Committee proposes amending Code of Civil Procedure section 177.5 to expressly include jurors in the category of persons subject to sanctions for violating a lawful court order under that section. The proposal was developed at the request of judges to eliminate any ambiguity about whether courts are authorized to sanction jurors.

This proposal was reviewed by the JLWG on March 26, 2014 and JLWG unanimously voted to recommend that the Judicial Council support the proposed legislation.

Presenter: Mr. Daniel Pone, Senior Attorney, Governmental Affairs, Judicial Council of California

Item 5

Proposal for Judicial Council-sponsored Legislation: Evidentiary Objections in Summary Judgment Proceedings (Action Required)

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) (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.

JLWG has not previously reviewed this proposal.

Presenter: Mr. Pone

Item 6

Extension of sunset date on increased fees implemented in the FY 2012-2013 budget. (Action Required)

The sunset date is 7/1/2015 unless noted otherwise. (SB 1021 (2012) Public Safety)

- $40 increase to first paper filing fees for unlimited civil cases where the amount in dispute is more than $25K (GC 70602.6)
- $40 increase to various probate and family law fees (GC 70602.6)
- $20 increase to various motion fees (GC 70617, GC 70657, GC 70677)
- $450 increase to the complex case fee. (GC 70616)
- $15 or $20 fee for various services to be distributed to the Trial Court Trust Fund under Section 68085.1 (Sargent Shriver project). Sunset expires on 7/1/17.
- $40 probate fee enacted in 2013, sunsets on 1/1/19. (GC 70662)

Presenter: Ms. Laura E. Speed, Assistant Director, Governmental Affairs, Judicial Council of California

Item 7

H.R. 5178 The Crime Victim Restitution and Court Fee Intercept Act (Action Required)

H.R. 5178 would allow for the interception of federal tax refunds for unpaid court debt and victim restitution.

Federal law permits the interception for child support debts, state tax and other federal debts, but currently does not include other court-ordered state debts (for example, fines and restitution arising from criminal judgments). The funds collected from such an intercept program not only benefit victims of crime and our state's General Fund, but many state agencies, cities, and counties. There are millions of dollars in uncollected court-imposed fines, fees, assessments, and restitution in our state.

The funds collected from such an intercept program will maintain vitally needed resources for the California judicial branch. The proposal will also benefit victims of crime where court-ordered obligations are imposed on offenders to pay for damages caused. There are millions of dollars in uncollected court-imposed fines, fees, assessments, and restitution in our state and throughout the country. Further, payment of unpaid court debt would protect the integrity of the judicial branch and promote public trust and confidence in the judicial system.

Under this legislation, these interceptions would be made against refunds that would otherwise be returned to the taxpayer. As such, there is no loss to the Federal budget. Additionally, court-ordered debts would follow in priority after child support and the other currently authorized debt priorities, and, as such would not affect the other entities now intercepting funds. Additionally, collection of court-imposed obligations through tax refund intercept is among the most accurate, least intrustive, and least burdensome methods to satisfy these debts.

The tax intercept proposal would be a revenue-generating mechanism, not a tax increase. Mechanisms are already in place to establish this program, there would be no need to install new or expensive protocols to implement this proposal.

This proposal has been endorsed by a number of national organizations such as the Conference of Chief Justices, Conference of State Court Administrators, National Association of Counties, American Bar Association, the Government Finance Officers Association, and the American Probation and Parole Association.

The Judicial Council has supported this bill four previous times, the last time in 2011. So that the Council may take action, the bill needs to be brought through the legislative review process to authorize Governmental Affairs to write letters of support.

Presenter(s)/Facilitator(s): Ms. Laura E. Speed, Assistant Director, Governmental Affairs, Judicial Council of California

Presenter: Ms. Speed

IV. ADJOURNMENT

Adjourn

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
September 5, 2014

To
Members of the Policy Coordination and Liaison Committee

From
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Subject
Proposal for Judicial Council-sponsored Legislation: Criminal Procedure—Appeals of the Imposition or Calculation of Fines and Fees under Penal Code section 1237

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
Arturo Castro, 415-865-7702
arturo.castro@jud.ca.gov
Sharon Reilly, 916-323-3121
sharon.reilly@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee proposes adding Penal Code section 1237.2[1] and amending section 1237 to prohibit appeals in felony cases based solely on the grounds of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim to the trial court. This proposal was developed at the request of courts to reduce the burdens associated with formal appeals and resentencing proceedings stemming from a common sentencing error.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to:

[1] All subsequent statutory references are to the Penal Code.

1. Add section 1237.2 to prohibit appeals based solely on the grounds of an error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs unless the defendant first presents the claim in the trial court at the time of sentencing, or, if the error is not discovered until after sentencing, the defendant first makes a motion for correction in the trial court; and

2. Amend section 1237 to include new section 1237.2 in the list of statutory exceptions to the appellate procedure set forth in that section.

The text of the proposed amendment to section 1237 and new section 1237.2 is attached at page 5.

Previous Council Action

As part of the Judicial Council's legislative priorities for 2012, the council directed the Policy Coordination and Liaison Committee (PCLC) to consider various legislative proposals developed by court representatives to advance judicial branch cost savings, new revenue, and operational efficiencies. This proposal was originally developed by the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees but referred to the Criminal Law Advisory Committee by PCLC for consideration with the benefit of appropriate subject matter expertise and public comment.

Rationale for Recommendation

The statutory scheme that governs the imposition and calculation of fines and other monetary penalties in California criminal cases is vast, complex, and frequently modified by the Legislature. As a result, appellate courts are often called upon to correct the erroneous imposition or calculation of fines and other monetary penalties on appeal. (See, e.g., *People v. Hamed* (2013) 221 Cal.App.4th 928, 939.)

When this sentencing error is the sole issue on appeal, trial and appellate courts incur significant costs and burdens associated with preparation of the formal record on appeal and resulting resentencing proceedings. By requiring that this sentencing error be first raised in the trial court, which has ready access to the court records and other information necessary to review and resolve such issues, this proposal would promote judicial economies and efficiencies by avoiding the costs and burdens associated with a formal appeal.

Because those economies would not be achieved if the defendant also raises other issues on appeal, this proposal is limited to instances in which this sentencing error is the *sole* issue on appeal. The proposal is modeled after section 1237.1, which similarly limits appeals based on errors in the calculation of presentence custody credits. Although not expressly stated in section 1237.1, the appeal limitations of that section apply only to cases in which a claim of an error concerning a custody credit calculation is the sole issue on appeal. (*People v. Acosta* (1996) 48 Cal.App.4th 411, 426-27 [Limiting section 1237.1 to cases in which a custody credits calculation is the sole issue on appeal makes "sound economic sense" and limits unwarranted expenditures of public money].)

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of seven comments. Of those, five agreed with the proposal, including the Superior Courts of Los Angeles, Riverside, and San Diego Counties, as well as the Court of Appeal, Second Appellate District; one agreed with the proposal if modified; and one did not agree with the proposal. A chart with all comments received and committee responses is attached at pages 6–8.

In addition, the Appellate Advisory Committee (AAC) reviewed the proposal and provided informal feedback as explained below. Generally, the AAC expressed support for providing trial courts the opportunity to initially correct this type of sentencing error, both because of the trial court's familiarity with its cases and because it would save the resources otherwise required to prepare the record on appeal.

Notable alternatives considered

The committee considered the following notable alternatives:

- ***Discovery of error after sentencing.*** As explained above, the proposal includes a provision that would allow the defendant to raise the issue after sentencing if the error was not discovered until later. One commentator and a member of the AAC expressed concern that this provision could be interpreted as requiring litigation to establish the circumstances surrounding the defendant's discovery of the error. The proposal is not intended to condition a defendant's ability to raise a claim of an erroneous imposition of a fine or other monetary penalty post-sentencing on any showing about the circumstances surrounding the discovery of the error. The committee declined to modify the proposal as the commentator suggested to avoid confusion and promote consistency with section 1237.1, which includes an identical provision that has not been interpreted as requiring any special showing about the discovery of the error.

- ***Inclusion of "forfeitures" in the proposal.*** On its own accord and as suggested by a member of the AAC, the committee considered but declined to include "forfeitures" in the list of monetary penalties included in proposed section 1237.2. In the felony context, "forfeitures" often involve the seizure of property involved in the commission of a crime, which can trigger complicated procedural requirements, including appellate issues more complex than those pertaining to the miscalculation or erroneous imposition of fines and other monetary penalties that the proposal is intended to address.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected. As described above, the proposal is designed to reduce the costs and burdens associated with appeals and resentencing proceedings by promoting resolution of minor sentencing disputes in the sentencing courts.

Attachments

1. Proposed amendment to Penal Code section 1237 and new section 1237.2, at page [#]
2. Chart of comments, LEG14-05, at pages [#]

Add Penal Code section 1237.2, effective January 1, 2016, to read:

1 § 1237.2. Imposition or calculation of fines, penalty assessments, surcharges, fees, or costs
2
3 No appeal shall be taken by the defendant from a judgment of conviction on the ground of an
4 error in the imposition or calculation of fines, penalty assessments, surcharges, fees, or costs
5 unless the defendant first presents the claim in the trial court at the time of sentencing, or, if the
6 error is not discovered until after sentencing, the defendant first makes a motion for correction in
7 the trial court. This section shall only apply in cases where the erroneous imposition or
8 calculation of fines, penalty assessments, surcharges, fees, or costs is the sole issue on appeal.
9
10 *Amend Penal Code section 1237, effective January 1, 2016, to read:*
11
12 An appeal may be taken by the defendant:
13
14 (a) From a final judgment of conviction except as provided in Section 1237.1, Section 1237.2,
15 and Section 1237.5. A sentence, an order granting probation, or the commitment of a defendant
16 for insanity, the indeterminate commitment of a defendant as a mentally disordered sex offender,
17 or the commitment of a defendant for controlled substance addiction shall be deemed to be a
18 final judgment within the meaning of this section. Upon appeal from a final judgment the court
19 may review any order denying a motion for a new trial.
20
21 (b) From any order made after judgment, affecting the substantial rights of the party.

LEG14–05

Proposed Legislation: Criminal Procedure: Appeals of the Imposition or Calculation of Fines and Fees *(amend Penal Code section 1237.2; amend Penal Code section 1237)*

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

	Commentator	Position	Comment	Committee Response
1.	California Court of Appeal, Second Appellate District	A	This proposed statute would provide that there is no appeal from the imposition of a fine or fee, *if that is the only appellate issue*, unless the matter was first raised in the trial court. **Comments** 1. We strongly support this proposal. 2. We agree with the Committee that there will be no implementation requirements or costs as a result of this proposal. It will, however, promote efficiency by giving the trial court an opportunity to correct any errors and it will eliminate unnecessary appeals.	No response required.
2.	Orange County Bar Association by Thomas Bienert, Jr., President	N	The Proposed change would deprive defendants of an additional venue for appealing sentencing errors.	The committee disagrees. The proposal requires only that defendants first provide the trial court—at sentencing or post-sentencing—the opportunity to correct the alleged error, when the error is the sole issue on appeal. The proposal does not prohibit defendants from raising the issue *after* the trial court's disposition of the claim, nor limit the ability of defendants to initially raise the issue on appeal in conjunction with other issues.
3.	Mr. Ronald L. Porter	AM	This is a good idea, except the provision as to when it was discovered. It should only require a motion be filed before the trial court for correction before an appeal is filed. Requiring it be brought up to the trial court at sentencing will only cause numerous possible claims to [be] presented unnecessarily at sentencing to protect the possible need for a challenge in the future and will do nothing to cure the stated problem.	The committee believes the language of the proposal as drafted is sufficient and declines to make any changes suggested by this comment. First, the proposal does not *require* that claims of an error in the imposition or calculation of fines, etc., be raised at the time of sentencing — although that is encouraged. Rather, it directs that this type of error may be raised in the trial court post-sentencing if it was not discovered at the

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

	Commentator	Position	Comment	Committee Response
			Eliminating the question of when it was discovered and requiring only a motion before the trial court before [filing] an appeal will make the correction sought without creating the possibility of unnecessary litigation over the question as to when it was discovered.	time of sentencing, when it is the sole issue on appeal. Second, the proposal is not intended to condition a defendant's ability to raise a claim of an erroneous imposition of a fine or other monetary penalty post-sentencing on any showing about the circumstances surrounding the discovery of the error. The committee, however, declined to modify the proposal to avoid confusion and promote consistency with section 1237.1, which includes an identical provision that has not been interpreted as requiring any special showing about the discovery of the error.
4.	Superior Court of Los Angeles County	A		No response required.
5.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	A	Agree with proposal.	No response required.
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response required.
7.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	No response required.

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MEMORANDUM

Date
September 5, 2014

To
Members of the Policy Coordination and Liaison Committee

From
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Subject
Proposal for Judicial Council-sponsored Legislation: Criminal Justice Realignment—Recalling Sentences under Penal Code section 1170(d)(1)

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
Arturo Castro, 415-865-7702
arturo.castro@jud.ca.gov
Sharon Reilly, 916-323-3121
sharon.reilly@jud.ca.gov

Executive Summary

The Criminal Law Advisory Committee proposes amending Penal Code section 1170(d)(1)[1] to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h). This proposal was developed at the request of criminal law judges to enhance judicial discretion by applying existing recall authority to a new category of felony sentences created by criminal justice realignment.

[1] All subsequent statutory amendments are to the Penal Code.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend section 1170(d)(1) to apply existing court authority to recall felony prison sentences to sentences now served in county jail under section 1170(h).

The text of the proposed amendment to section 1170(d)(1) is attached at page [insert page when final].

Previous Council Action

No relevant previous Judicial Council action to report.

Rationale for Recommendation

Section 1170(d)(1) authorizes courts to recall felony prison sentences on their own motion within 120 days of the defendant's commitment to prison or anytime upon recommendation of state prison officials. Section 1170(d)(1) is generally designed to vest courts with broad authority to resentence "for any reason rationally related to lawful sentencing." (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 456.) By its express terms, section 1170(d)(1) only applies to state prison sentences.

Legislation enacted as part of the Criminal Justice Realignment Act of 2011 implemented broad changes to felony sentencing laws, including replacing prison sentences for certain felony offenders with county jail sentences under section 1170(h). The legislation, however, did not also amend section 1170(d)(1) to apply existing court discretion to recall felony sentences to the sentences now served in county jail under section 1170(h).

The committee believes that the general purpose of section 1170(d)(1)—to authorize courts to resentence for any reason rationally related to lawful sentencing—applies equally to the recall of county jail sentences under section 1170(h). By expanding court discretion to recall sentences, this proposal is designed to enhance judicial discretion, promote uniform and effective sentencing practices, and update longstanding sentencing laws to reflect recent criminal justice realignment legislation.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of seven comments. Of those, five agreed with the proposal, including the Superior Courts of Los Angeles, Riverside, and San Diego Counties, and the Public Defender and Alternate Public Defender of Los Angeles County; one agreed with the proposal if modified; and one did not take a formal position. A chart with all comments received and committee responses is attached at pages 5–6.

In addition, in April 2014, before the proposal circulated for public comment, the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees reviewed the proposal and voted unanimously to support.

Notable alternatives considered

The committee considered but declined a suggestion regarding providing notice of recalled sentences. The California Attorney General's Office (AG) recommended that the proposal include a provision requiring that, in the event a notice of appeal has been filed at the time of recall and resentence, the sentencing court provide notice of the recall and resentence to the court of appeal and the parties, including the AG. The committee, however, declined the suggestion as unnecessary. Rule 8.340(a) of the California Rules of Court provides that if the trial court amends or recalls a judgment or makes any other order in the case following the certification of the record, the clerk must send a copy of the amended abstract of judgment to the reviewing court, the parties and others, including the AG if counsel for the prosecution on appeal.

In addition, to ensure that the proposal applies to *all* counties, including counties in which the county jail is operated by a corrections department, rather than a county sheriff, the committee modified the proposal to replace references to "county sheriff" with "county sheriff *or county director of corrections*."

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts are expected.

Attachments

1. Proposed amendments to Penal Code section 1170(d)(1), at page [#]
2. Chart of comments, LEG14-03, at pages [#–#]

Penal Code section 1170(d)(1) would be amended, effective January 1, 2016, to read:

1 When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced
2 to be imprisoned in the state prison <u>or county jail under subdivision (h)</u> and has been committed
3 to the custody of the secretary, <u>county sheriff, or county director of corrections</u>, the court may,
4 within 120 days of the date of commitment on its own motion, or at any time upon the
5 recommendation of the secretary or the Board of Parole Hearings, <u>county sheriff, or county</u>
6 <u>director of corrections</u>, recall the sentence and commitment previously ordered and resentence
7 the defendant in the same manner as if he or she had not previously been sentenced, provided the
8 new sentence, if any, is no greater than the initial sentence. The court resentencing under this
9 subdivision shall apply the sentencing rules of the Judicial Council so as to eliminate disparity of
10 sentences and to promote uniformity of sentencing. Credit shall be given for time served.

LEG14–03

Proposed Legislation: Criminal Justice Realignment: Recalling Sentences under Penal Code section 1170(d)(1) *(amend Penal Code section 1170(d)(1))*

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

	Commentator	Position	Comment	Committee Response
1.	Conference of California Bar Associations (CCBA) by Larry Doyle, Legislative Representative	A	This recommendation essentially duplicates Resolution 09-01-2013 (http://larrydoylelaw.com/wp-content/uploads/2013/11/09-01-2013.pdf) adopted by the CCBA at its October 2013 meeting. The resolution notes that with little difference between these sentences other than the location of incarceration – prison as compared to county jail - treating the ability to recall these two types of sentences differently would otherwise raise state and federal constitutional equal protection problems, and leave the judiciary completely powerless to remedy all Penal Code section 1170 (h) sentences for any legitimate reason post judgment. Clarity in section 1170 (d)(1) will eliminate arbitrary results for all trial courts across California and give expressed guidance to all trial courts on how best to exercise its constitutional and statutory authority to effectuate post judgment section 1170 (h) (county jail) sentences.	No response required.
2.	California Department of Justice, Office of the Attorney General by Melissa Whitaker, Legislative Coordinator	AM	A trial court may recall a sentence and resentence a defendant under Penal Code section 1170(d)(1) even though a notice of appeal has already been filed. (*Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1835-1836; see *People v. Turrin* (2009) 176 Cal.App.4th 1200, 1204.) The proposed legislation does not provide a mechanism for the Attorney General's Office to receive notice of a recall and resentence in the event a notice of	The committee declines the suggestion as unnecessary. Rule 8.340(a) of the California Rules of Court provides that if the trial court amends or recalls the judgment or makes any other order in the case following the certification of the record, the clerk must send a copy of the amended abstract of judgment to the parties, including the Attorney General if counsel for the prosecution on appeal, as well as the reviewing court.

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

	Commentator	Position	Comment	Committee Response
			appeal has been filed. In the past, our office has often learned of such action through CDCR, but that connection will not benefit us in cases in which the defendant is sentenced locally pursuant to Penal Code section 1170(h)(5). Notice of such action is necessary for our office's proper and efficient handling of appeals. It would be beneficial for the parties and the Court of Appeal for the proposal to include a provision stating that, in the event a notice of appeal has been filed at the time of recall and resentence, the sentencing court shall provide notice of the recall and resentence to the court of appeal and the parties, including the Attorney General's Office.	
3.	Los Angeles County Offices of the Public Defender and Alternate Public Defender by Ronald L. Brown, Public Defender, and Janice Y. Fukai, Alternate Public Defender	A	The Los Angeles County Offices of the Public Defender and Alternate Public Defender agree with Proposed Legislation 14-03, which will amend Penal Code section 1170, subdivision (d)(1), to apply existing court authority to recall felony prison sentences to new county jail sentences under Penal Code section 1170, subdivision (h)(5). Penal Code section 1170, subdivision (d)(1), while designed to provide courts with broad authority to resentence defendants, clearly only applies to state prison sentences. However, since the implementation of criminal justice realignment legislation in October of 2011,	No response required.

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

	Commentator	Position	Comment	Committee Response
			prison sentences for certain felony offenses have been replaced with county jail sentences pursuant to Penal Code section 1170, subdivision (h)(5). As a result, this major legislative change has now created two classes of felons: state prison felons and county jail felons. Unfortunately for county jail felons, although felony sentences served in prison and felony sentences served in a county jail are considered identical for priorability purposes under Penal Code section 667.5, subdivision (b), only the state prison sentences are currently subject to recall under Penal Code section 1170, subdivision (d)(1). This creates a strange and counter-intuitive result; defendants who were sentenced to more serious offenses that mandated state prison sentences are allowed to have their sentences recalled, while defendants who committed less serious offenses which resulted in sentences served in county jail are denied any such relief. The stated purpose of the realignment legislation is to realign low-level felony offenders who have no prior convictions for serious, violent, or sex offenses to locally-run community-based corrections programs. (Pen. Code § 17.5, subd. (1)(5).) However, for those "realigned" prisoners, it is grossly unfair that they are not given the same opportunity for a sentence recall that more serious offenders are entitled to.	

	Commentator	Position	Comment	Committee Response
			In order to further promote uniform and effective sentencing practices, and to give county jail felons the same access to the sentencing court for sentence corrections that are currently limited to state prison felons, the Los Angeles County Offices of the Public Defender and Alternate Public Defender support the proposed legislation.	
4.	Superior Court of Los Angeles County	A		No response required.
5.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	A	Agree with proposal.	No response required.
6.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	No response required.
7.	Hon. Peter B. Twede Superior Court of Glenn County		Leg 14-03 1170(d)(1) Recall of sentence. The only issue I have with this particular legislation is the ability of the ***county sheriff*** to request the recall "at any time" after sentence is imposed. I envision petitions being filed on the basis of the good conduct of the defendant requesting a modification to decrease the sentence and therefore increase available space in the facility.	The committee appreciates this comment, and acknowledges the importance of issues involving prison and county jail overcrowding. The statute currently permits courts to recall felony prison sentences at the recommendation of state prison officials, made at any time. The court has the discretion to deny such recommendations. This proposal is simply designed to apply this existing court authority to the new county jail sentences under section 1170(h). The committee believes that the general purpose of section 1170(d)(1)—to authorize courts to resentence for any reason rationally related to lawful sentencing—applies equally to the recall of county jail sentences under section 1170(h).

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

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MEMORANDUM

Date
September 22, 2014

To
Members of the Policy Coordination and Liaison Committee

From
Criminal Law Advisory Committee
Hon. Tricia Ann Bigelow, Chair

Subject
Proposal for Judicial Council-sponsored Legislation: Sentencing Report Deadlines

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
Kimberly DaSilva, (415) 865-4534
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Executive Summary

The Criminal Law Advisory Committee recommends amending Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report by the required deadlines.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend Penal Code section 1203 to require courts to find good cause before continuing a sentencing hearing for failure by the probation department to provide a sentencing report by the required deadlines.

The text of the proposed legislation is attached at page 4.

Previous Council Action

There has been no previous council action regarding this issue.

Rationale for Recommendation

Under current law, probation sentencing reports must be provided to the parties at least five days before the sentencing hearing unless the deadline is waived by the parties either in writing or by oral stipulation in open court. (Pen. Code, §1203(b)(2)(E).) The purpose of the deadline is to afford defendants a "proper opportunity to comprehend, analyze, investigate and evaluate the report." (*People v. Bohannon* (2000) 82 Cal.App.4th 798, 808–809; *People v. Leffel* (1987) 196Cal.App.3d 1310, 1318.) If the probation department does not provide the report by the deadline and the defendant objects and requests a continuance, failure by the court to grant the continuance constitutes a denial of due process, entitling the defendant to a remand for sentencing. (*People v. Bohannon, supra,* 82 Cal.App.4th 798, 808–809.) Defendants need not show actual prejudice. (*Id*. at 809.)

Thus, defendants are entitled to automatic continuances whenever the deadline is missed, regardless of whether the missed deadline had any impact on the defendant's ability to review and investigate the probation report. As a result, courts are automatically required to conduct additional sentencing proceedings upon request, even when the proceedings may be unnecessary.

This proposal was developed at the request of criminal law judges to vest courts with discretion to decide on a case-by-case basis whether continuances due to noncompliance with the report deadline are justified, as opposed to the automatic continuances required by current law.

By requiring good cause for continuances, as opposed to the presumptive right to a continuance under current law, this proposal would vest courts with the discretion to decide whether the circumstances of a particular case warrant a continuance. Even if the deadline is missed, for example, a defendant may still have adequate time to review the report and raise concerns about the report's contents, obviating the need for an automatic continuance. This proposal would eliminate extraneous sentencing proceedings and ease the administrative burdens associated with unnecessary remands for sentencing, without compromising the defendant's right to have sufficient opportunity to evaluate the probation report.

Comments, Alternatives Considered, and Policy Implications

The proposed amendment circulated for public comment in spring 2014. The comment period ended on June 18th. A total of five comments were received. Of those, three commentators agreed with the proposal. Two commentators did not agree with the proposal and one commentator did not indicate either agreement or disagreement. A chart providing all of the comments received and committee recommendations is attached at pages 5–6.

Notably, one commentator stated that defense counsel often waive the statutory time for sentencing yet probation reports are still filed late. Thus, he argues that courts should look to probation to ameliorate the problem rather than penalize the defense with this new burden to argue for good cause. The committee declined this suggestion because under the proposed amendment courts would have discretion to consider the burdens placed on the defendant by the tardiness of the report during their good cause determinations. In their discretion, courts will continue to grant these continuances when they are necessary on a case-by-case basis. A time

waiver would become a factor in the court's ultimate determination of whether the particular case merits a continuance.

Implementation Requirements, Costs, and Operational Impacts

No significant implementation requirements, costs, or operational impacts for courts are expected at the trial level.

Attachments

1. Proposed amendment to Penal Code section 1203, at page 4
2. Comments chart, LEG14-07, at pages 5–6

Penal Code section 1203 would be amended, effective January 1, 2016, to read:

1203. (a) ***

(b) (1) Except as provided in subdivision (j), if a person is convicted of a felony and is eligible for probation, before judgment is pronounced, the court shall immediately refer the matter to a probation officer to investigate and report to the court, at a specified time, upon the circumstances surrounding the crime and the prior history and record of the person, which may be considered either in aggravation or mitigation of the punishment.

(2) (A) The probation officer shall immediately investigate and make a written report to the court of his or her findings and recommendations, including his or her recommendations as to the granting or denying of probation and the conditions of probation, if granted.

(B) *** (D)

(E) The report shall be made available to the court and the prosecuting and defense attorneys at least five days, or upon request of the defendant or prosecuting attorney nine days, prior to the time fixed by the court for the hearing and determination of the report, and shall be filed with the clerk of the court as a record in the case at the time of the hearing. The time within which the report shall be made available and filed may be waived by written stipulation of the prosecuting and defense attorneys that is filed with the court or an oral stipulation in open court that is made and entered upon the minutes of the court. Any request for a continuance of the hearing based upon a failure to make the report available to the parties within the deadlines specified above may only be granted by the court upon a finding of good cause.

***

	Commentator	Position	Comment	Committee Response
1.	Court of Appeal, Second Appellate District	A	The probation report must be made available five days (or nine if requested) prior to the hearing. This proposal would allow the trial court to continue the hearing on a showing of good cause. Currently, hearings must be automatically continued if the time limit cannot be met, even if the missed deadline has no effect on the defendant's ability to participate in the sentencing hearing. **Comments** 1. We support this proposal, although it will lead to arguments on appeal that the trial court abused its discretion in ruling on the continuance motion. Efficiencies gained at the trial level will be paid for in the reviewing courts. 2. We agree with the Committee that, apart from minimal judicial education, no significant implementation requirements or costs may be anticipated.	No response required.
2.	Orange County Bar Association by Thomas Bienert, Jr., President	N	In some counties, the P&S report only becomes available to the defense on the actual date of the sentencing due to the understaffing of probation departments. Defense counsel regularly waives the statutory time for sentencing so the probation department can prepare an appropriate P&S report yet the report is still not timely. The contents of the P&S report are often critical not only to defendant's sentence but to defendant's ultimate prison housing if sentenced to state	The committee declines this suggestion because under the proposed amendment courts consider the burdens placed on the defendant by the tardiness of the report during their good cause determination. In their discretion, courts will continue to grant these continuances when they are necessary on a case by case basis. A time waiver would become a factor in the court's ultimate determination of whether the particular case merits a continuance.

	Commentator	Position	Comment	Committee Response
			prison. Defense counsel is presently free to waive any defects in time in open court should the defense deem it appropriate to do so. There is no need to require a showing of good cause in this instance. Given what is at stake, the court need not substitute its judgment for that of defense counsel or the defendant when it is not counsel who has caused the delay. If there is a problem here, the court should take it up with the probation department – not the litigants.	
3.	Superior Court of Los Angeles County	A		No response required.
4.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	NI	No comment.	No response required.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	N	What specific "abuse" problems is this legislation trying to cure? It seems to impose an unnecessary extra step on the court (to make a finding of "good cause") because, in the majority of cases, good cause is going to exist (presuming the defense is only going to object and request a continuance if it is really necessary).	This proposal is designed to eliminate unnecessary continuances. Rather than placing an extra burden on courts, this proposal would lessen the burden on court resources required by automatic continuances, which require courts to expend additional resources.
6.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	No response required.

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

JUDICIAL COUNCIL OF CALIFORNIA

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MEMORANDUM

Date
September 5, 2014

To
Members of the Policy Coordination and Liaison Committee

From
Criminal Law Advisory Committee
Hon. Tricia A. Bigelow, Chair

Subject
Proposal for Judicial Council-sponsored Legislation: Criminal and Civil Procedure—Monetary Sanctions under Code of Civil Procedure section 177.5

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
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Executive Summary

The Criminal Law Advisory Committee proposes amending Code of Civil Procedure section 177.5 to expressly include jurors in the category of persons subject to sanctions for violating a lawful court order under that section. The proposal was developed at the request of judges to eliminate any ambiguity about whether courts are authorized to sanction jurors.

Recommendation

The Criminal Law Advisory Committee recommends that the Judicial Council sponsor legislation to amend section 177.5 to add jurors to the list of persons subject to sanctions under that section.
The text of the proposed amendment to section 177.5 is attached at page 4.

Previous Council Action

None taken.

Rationale for Recommendation

Section 177.5 authorizes courts to impose monetary sanctions upon persons for violations of lawful court orders "done without good cause or substantial justification" in both criminal and civil cases. (*People v. Tabb* (1991) 228 Cal.App.3d 1300, 1310.) Section 177.5 states "the term 'person' includes a witness, a party, a party's attorney, or both." As such, the section does not expressly apply to jurors.

Sanctions under this section may be made on the court's own motion after notice and opportunity to be heard. An order imposing sanctions must be made in writing and recite in detail the conduct or circumstances justifying the order.

Expressly adding jurors to the list of persons subject to monetary sanctions under section 177.5 will remove any ambiguity about whether courts have the discretion to impose these sanctions against jurors under that section. This authority will provide courts with a less burdensome alternative to formal contempt proceedings for purposes of controlling the proceedings. Ensuring that courts are vested with this discretion will facilitate the orderly and efficient administration of justice by empowering courts with a less disruptive and time consuming alternative for preserving the integrity of the proceedings.

Comments, Alternatives Considered, and Policy Implications

The proposal was circulated for comment during the spring 2014 cycle, yielding a total of six comments. Of those, four agreed with the proposal, including the Superior Courts of Los Angeles and San Diego Counties, one made "no comment," and one did not agree with the proposal. A chart with all comments received and committee responses is attached at pages 5-7.

In addition, in March 2014, before the proposal circulated for public comment, the Joint Legislation Working Group of the Trial Court Presiding Judges and Court Executives Advisory Committees reviewed the proposal and voted unanimously to support it. The Civil and Small Claims Advisory Committee also reviewed the proposal and provided informal feedback, but did not take a formal position. Some members of that committee said that the proposal could have the positive effect of deterring misconduct. Other members expressed concerns that the proposal could create further disincentives for jury service and questioned the policy of encouraging courts to sanction jurors. Some members were of the opinion that this provision would rarely be invoked by judges.

Notable alternatives considered

The Criminal Law Advisory Committee considered the following notable objections to the proposal:

- ***General concerns about sanctioning jurors, potential for improper judicial use, and distinguishing jurors from other "persons" in the system.*** A commentator opposed the

proposal on several grounds, including that jurors should receive the highest level of protection in the judicial system; judges do not always properly perform their duties; judges could easily abuse their authority, and jurors do not fit within the definition of "persons" in the same manner as do parties or witnesses. The commentator also suggested that jurors should be entitled to separate jury trials, with judges subject to cross-examination, before sanctions may be imposed.

The committee declined to modify the proposal as suggested by this commentator. The committee believes that the proposal will sufficiently ensure due process and not invite abuse of discretion.

Implementation Requirements, Costs, and Operational Impacts

No implementation requirements, costs, or operational impacts are expected. As described above, the proposal is designed to vest courts with broader authority to address juror misconduct during trials by providing a less burdensome alternative to formal contempt proceedings for purposes of controlling the proceedings.

Attachments

1. Proposed amendments to Code of Civil Procedure section 177.5, at page [#]
2. Chart of comments, LEG 14-04, at pages [#]

Code of Civil Procedure section 177.5 would be amended, effective January 1, 2016, to read:

1 A judicial officer shall have the power to impose reasonable money sanctions, not to exceed
2 fifteen hundred dollars ($1,500), notwithstanding any other provision of law, payable to the
3 court, for any violation of a lawful court order by a person, done without good cause or
4 substantial justification. This power shall not apply to advocacy of counsel before the court. For
5 the purposes of this section, the term "person" includes a witness, <u>a juror,</u> a party, a party's
6 attorney, or both.
7
8 Sanctions pursuant to this section shall not be imposed except on notice contained in a party's
9 moving or responding papers; or on the court's own motion, after notice and opportunity to be
10 heard. An order imposing sanctions shall be in writing and shall recite in detail the conduct or
11 circumstances justifying the order.

	Commentator	Position	Comment	Committee Response
1.	Orange County Bar Association by Thomas Bienert, Jr., President	A	The proposed change would achieve the purpose of deterring juror misconduct. No special training would be required and twelve months would be a sufficient amount of time for its implementation.	None needed.
2.	Mr. Ronald L. Porter	N	The need to keep a court operating in a orderly fashion is not in question, however, any sanctions against a juror, should receive the highest scrutiny before imposition. Under our system of law and the function of juries, jurors should receive the highest protection. The system should protect them against any possibility of abuse. As we all know, even judges do not perform their duties in a proper manner at all times, and our jury system demands a juror receive the highest protect from any possibility of abuse. These are citizens, most of which have no idea of how the judicial system works and are there seeking truth and justice. A juror may ask questions that may irritate a judge or make demands they believe as a juror entitled to or should receive. This change could also provide judges an excuse and/or justification not to answer proper questions presented to them by a juror or jurors. This proposed change is very dangerous and could easily be abused to improperly influence a jury decision, discourage jurors from performing their proper duties or to serve properly as a juror in the future. I would suggest that if a judge believes a juror should be sanctioned, he should put it before the	Disagree. The committee believes that the proposal sufficiently ensures due process, that the reasoning behind and goals of the proposal are sound, and that judicial officers are presumed to fairly apply the law and execute their duties under the law.

	Commentator	Position	Comment	Committee Response
			same jury that witnessed the incident for a decision at the end or the trial, with the judge presenting his case with cross examination and the juror being given the opportunity to present his position. Along with a universal statewide instruction to be given to the jury prior to the judge presenting his case. After a . . . jury decision, if rendered guilty, it should also be reviewed an independent judge with the primary purpose of ensure the decision protects the jury system from improper influence. The only other possible way to properly protect the jury function would be to hold a separate jury trial on the issue, with a universal state wide instruction to given to the jury with the judge as a witness. The text of the statue was clearly misinterpreted beyond the intent in People v. Kwee (1995) 39 Cal.App.4th 1, 5, note: "the term 'person' includes a witness, a party, a party's attorney, or both.". The appellate court clearly went beyond the statue. It should have ruled within the narrow bounds of the statue and left it to the legislature to make any necessary changes to the law. The jury is not a party or a witness, they are the decision makers. To some degree the judge is there to serve [] the jury. The jury can not reasonably be placed into the definition of the word person in the statute. The appellate court should have narrowly interpreted the statue with the obvious fact that a juror did not fit into the scope of the statue, with a finding if the legislator wanted to include jurors it would	

LEG14–04

Proposed Legislation: Jurors: Monetary Sanctions under Code of Civil Procedure section 177.5 *(amend Code of Civil Procedure section 177.5)*

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

	Commentator	Position	Comment	Committee Response
			have specifically included them.	
3.	Superior Court of Los Angeles County	A		None needed.
4.	Superior Court of Riverside County by Daniel Wolfe, Managing Attorney	NI	No comment.	None needed.
5.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No additional comments.	None needed.
6.	Hon. Peter B. Twede Superior Court of Glenn County	A	Leg 14-04, 05, 06 and 07 appear to be appropriate changes that are necessitated by the circumstances outlined in those proposals.	None needed.

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

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MEMORANDUM

Date
September 3, 2014

To
Members of the Policy Coordination and Liaison Committee

From
Civil and Small Claims Advisory Committee
Hon. Patricia M. Lucas, Chair
Appellate Advisory Committee
Hon. Raymond J. Ikola, Chair

Subject
Proposal for Judicial Council-sponsored Legislation: Evidentiary Objections in Summary Judgment Proceedings

Action Requested
Recommend for Judicial Council Sponsorship

Deadline
N/A

Contact
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Executive Summary

The Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) (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 Civil and Small Claims Advisory Committee (CSCAC) and the Appellate Advisory Committee (AAC) 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.

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

Background

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 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.

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 sections 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.)

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*.)

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

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[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.

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.

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:

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

[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.

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:

> (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 Committee on Appellate Courts 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 Committee (CSCAC) was concerned that the change would have unintended consequences by allowing a court to rule only on objection 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 [fill in when final]
2. Chart of comments, LEG14-02, at pages [fill in when final] –

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

1 **(a)–(b)** * * *
2
3 **(c)** The motion for summary judgment shall be granted if all the papers submitted show that
4 there is no triable issue as to any material fact and that the moving party is entitled to a
5 judgment as a matter of law. In determining whether the papers show that there is no
6 triable issue as to any material fact the court shall consider all of the evidence set forth in
7 the papers, except that to which objections have been made and sustained by the court, and
8 all inferences reasonably deducible from the evidence, except summary judgment may not
9 be granted by the court based on inferences reasonably deducible from the evidence, if
10 contradicted by other inferences or evidence, which raise a triable issue as to any material
11 fact.
12 <u>The court need rule only on those objections to evidence that is material to its disposition</u>
13 <u>of the summary judgment motion. Objections not ruled on are preserved on appeal.</u>
14
15 **(d)–(u)** * * *

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.	The committees note the agreement with the proposal; no further response is needed.

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			5. 2 months is sufficient time for the 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	The committees note the agreement with the proposal; no further response is needed.

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			presented ***113 pages*** of evidentiary objections. 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	

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			words, litigants should focus on the objections that really count. Otherwise, they may face informal reprimands or 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	

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			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 [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	

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			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.	
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	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,

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			in section 437c.	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.
			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."

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			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 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 <u>trial</u> court <u>as described herein</u>, 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. <u>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</u>	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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			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 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.	The committees will consider this at a future meeting.

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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 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"	

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			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.) 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 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.

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			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 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.	The committee appreciates the comments on specific questions.

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			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.	
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	

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			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 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.	The committees modified the proposal to use the word "material" and to provide that objections not ruled on are preserved on appeal.
			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	

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			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. *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*	

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			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 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.	The committee will consider this at a future meeting.

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			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 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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113TH CONGRESS
2D SESSION

H. R. 5178

To amend the Internal Revenue Code of 1986 to allow an offset against income tax refunds to pay for restitution and other State judicial debts that are past-due.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2014

Mr. PAULSEN (for himself, Mr. BLUMENAUER, and Mr. DEFAZIO) introduced the following bill; which was referred to the Committee on Ways and Means

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A BILL

To amend the Internal Revenue Code of 1986 to allow an offset against income tax refunds to pay for restitution and other State judicial debts that are past-due.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the ''Crime Victim Restitu-
5 tion and Court Fee Intercept Act''.

6 **SEC. 2. OFFSET OF RESTITUTION AND OTHER STATE JUDI-**
7 **CIAL DEBTS AGAINST INCOME TAX REFUND.**

8 (a) IN GENERAL.—Section 6402 of the Internal Rev-
9 enue Code of 1986 is amended by redesignating sub-

1 sections (f) through (l) as subsections (g) through (m),
2 respectively, and by inserting after subsection (f) the fol-
3 lowing:

4 ''(g) COLLECTION OF PAST-DUE, LEGALLY EN-
5 FORCEABLE RESTITUTION AND OTHER STATE JUDICIAL
6 DEBTS.—

7 ''(1) IN GENERAL.—In any State which wishes
8 to collect past-due, legally enforceable State judicial
9 debts, the chief justice of the State's highest court
10 shall designate a single State entity to communicate
11 judicial debt information to the Secretary. In mak-
12 ing such designation, the chief justice of the State's
13 highest court shall select, whenever practicable, a
14 relevant State official or agency responsible under
15 State law for collecting the State's income tax or
16 other statewide excise at the time of the designation.
17 Upon receiving notice from a State designated entity
18 that a named person owes a past-due, legally en-
19 forceable State judicial debt to or in such State, the
20 Secretary shall, under such conditions as may be
21 prescribed by the Secretary—

22 ''(A) reduce the amount of any overpay-
23 ment payable to such person by the amount of
24 such State judicial debt;

1 "(B) pay the amount by which such over-
2 payment is reduced under subparagraph (A) to
3 such State designated entity and notify such
4 State designated entity of such person's name,
5 taxpayer identification number, address, and
6 the amount collected; and
7 "(C) notify the person making such over-
8 payment that the overpayment has been re-
9 duced by an amount necessary to satisfy a past-
10 due, legally enforceable State judicial debt.
11 If an offset is made pursuant to a joint return, the
12 notice under subparagraph (B) shall include the
13 names, taxpayer identification numbers, and ad-
14 dresses of each person filing such return.
15 "(2) PRIORITIES FOR OFFSET.—Any overpay-
16 ment by a person shall be reduced pursuant to this
17 subsection—
18 "(A) after such overpayment is reduced
19 pursuant to—
20 "(i) subsection (a) with respect to any
21 liability for any internal revenue tax on the
22 part of the person who made the overpay-
23 ment;
24 "(ii) subsection (c) with respect to
25 past-due support;

1 "(iii) subsection (d) with respect to
2 any past-due, legally enforceable debt owed
3 to a Federal agency; and
4 "(iv) subsection (e) with respect to
5 any past-due, legally enforceable State in-
6 come tax obligations; and
7 "(B) before such overpayment is credited
8 to the future liability for any Federal internal
9 revenue tax of such person pursuant to sub-
10 section (b).
11 If the Secretary receives notice from 1 or more State
12 designated entities of more than 1 debt subject to
13 paragraph (1) that is owed by such person to such
14 State agency or State judicial branch, any overpay-
15 ment by such person shall be applied against such
16 debts in the order in which such debts accrued.
17 "(3) NOTICE; CONSIDERATION OF EVIDENCE.—
18 Rules similar to the rules of subsection (e)(4) shall
19 apply with respect to debts under this subsection.
20 "(4) PAST-DUE, LEGALLY ENFORCEABLE STATE
21 JUDICIAL DEBT.—
22 "(A) IN GENERAL.—For purposes of this
23 subsection, the term 'past-due, legally enforce-
24 able State judicial debt' means a debt—

1 "(i) which resulted from a judgment
2 or sentence rendered by any court or tri-
3 bunal of competent jurisdiction which—
4 "(I) handles criminal or traffic
5 cases in the State; and
6 "(II) has determined an amount
7 of State judicial debt to be due; and
8 "(ii) which resulted from a State judi-
9 cial debt which has been assessed and is
10 past-due but not collected.
11 "(B) STATE JUDICIAL DEBT.—For pur-
12 poses of this paragraph, the term 'State judicial
13 debt' includes court costs, fees, fines, assess-
14 ments, restitution to victims of crime, and other
15 monies resulting from a judgment or sentence
16 rendered by any court or tribunal of competent
17 jurisdiction handling criminal or traffic cases in
18 the State.
19 "(5) REGULATIONS.—The Secretary shall issue
20 regulations prescribing the time and manner in
21 which State designated entities must submit notices
22 of past-due, legally enforceable State judicial debts
23 and the necessary information that must be con-
24 tained in or accompany such notices. The regula-
25 tions shall specify the types of State judicial monies

1 and the minimum amount of debt to which the re-
2 duction procedure established by paragraph (1) may
3 be applied. The regulations shall require State des-
4 ignated entities to pay a fee to reimburse the Sec-
5 retary for the cost of applying such procedure. Any
6 fee paid to the Secretary pursuant to the preceding
7 sentence shall be used to reimburse appropriations
8 which bore all or part of the cost of applying such
9 procedure.

10 ''(6) ERRONEOUS PAYMENT TO STATE.—Any
11 State designated entity receiving notice from the
12 Secretary that an erroneous payment has been made
13 to such State designated entity under paragraph (1)
14 shall pay promptly to the Secretary, in accordance
15 with such regulations as the Secretary may pre-
16 scribe, an amount equal to the amount of such erro-
17 neous payment (without regard to whether any other
18 amounts payable to such State designated entity
19 under such paragraph have been paid to such State
20 designated entity).''.

21 (b) DISCLOSURE OF RETURN INFORMATION.—Sec-
22 tion 6103(l)(10) of such Code is amended by striking ''or
23 (f)'' each place it appears in the text and heading and
24 inserting ''(f), or (g)''.

25 (c) CONFORMING AMENDMENTS.—

1 (1) Section 6402(a) of such Code is amended
2 by striking ''and (f)'' and inserting ''(f), and (g)''.
3 (2) Section 6402(d)(2) of such Code is amend-
4 ed by striking ''subsections (e) and (f)'' and insert-
5 ing ''subsections (e), (f), and (g)''.
6 (3) Section 6402(e)(3)(B) of such Code is
7 amended to read as follows:
8 ''(B) before such overpayment is—
9 ''(i) reduced pursuant to subsection
10 (g) with respect to past-due, legally en-
11 forceable State judicial debts, and
12 ''(ii) credited to the future liability for
13 any Federal internal revenue tax of such
14 person pursuant to subsection (b).''.
15 (4) Section 6402(h) of such Code, as so redes-
16 ignated, is amended by striking ''or (f)'' and insert-
17 ing ''(f), or (g)''.
18 (5) Section 6402(j) of such Code, as so redesig-
19 nated, is amended by striking ''or (f)'' and inserting
20 '', (f), or (g)''.
21 (d) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to refunds payable for taxable
23 years beginning after December 31, 2013.

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