



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 27, 2015

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Title	Agenda Item Type
Civil Practice and Procedure: Summary Judgment Proceedings	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 3.1350 and 3.1354	January 1, 2016
Recommended by	Date of Report
Civil and Small Claims Advisory Committee	August 21, 2015
Hon. Patricia M. Lucas, Chair	Contact
Appellate Advisory Committee	Susan R. McMullan, 415-865-7990
Hon. Raymond J. Ikola, Chair	<a href="mailto:susan.mcmullan@jud.ca.gov">susan.mcmullan@jud.ca.gov</a>
	Heather Anderson, 415-865-7691
	<a href="mailto:heather.anderson@jud.ca.gov">heather.anderson@jud.ca.gov</a>

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### **Executive Summary**

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

### **Recommendation**

The Civil and Small Claims Advisory Committee and the Appellate Advisory Committee recommend that the Judicial Council, effective January 1, 2016:

1. Amend rule 3.1350 to define “material facts” and clarify that the separate statement of undisputed material facts in support of or opposition to a motion for summary judgment should include only material facts; and
2. Amend rule 3.1354 to eliminate one example of an objection on relevance grounds to evidence in support of summary judgment.

The text of the amended rules is attached at pages 9–14.

### **Previous Council Action**

Rule 3.1350 was amended effective January 1, 2008, to revise the format for separate statements submitted in support of a motion for summary judgment or summary adjudication of issues. Effective January 1, 2007, the council amended rule 3.1354 to specify the format of written objections to evidence in summary judgment and summary adjudication motions and to require the objecting party to provide a proposed order for ruling on the objections.

### **Rationale for Recommendation**

The suggestion that led to this proposal and a related legislative proposal originated with the Ad Hoc Advisory Committee on Court Efficiencies, Cost Savings, and New Revenue. In spring 2012, the ad hoc committee proposed amending Code of Civil Procedure section 437c to limit the requirement that the court rule on objections to evidence. The proposal, which is intended to reduce the time and expense of court proceedings, would have added to subdivision (g) the following: “The court need rule only on those objections to evidence, if any, on which the court relies in determining whether a triable issue exists.” In support of this amendment, the ad hoc committee stated, in part:

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

The proposal was referred to the Civil and Small Claims Advisory Committee, which determined that working with the Appellate Advisory Committee on this issue would be helpful. Through a joint subcommittee, the advisory committees developed this rule proposal and a companion proposal to amend Code of Civil Procedure section 437c.

Both proposals are intended to reduce the burden of large numbers of evidentiary objections on trial courts, without resulting in a corresponding negative impact on the appellate courts.

Although the courts have not collected comprehensive data on the time and resources expended in ruling on objections to evidence offered in support of or opposition to summary judgment motions, anecdotal reports from advisory committee members (both judges and attorneys) indicate that they are substantial. Advisory committee members state that many objections are unnecessary and there is no need for rulings on those objections. 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.)

Currently, some judges rule on evidentiary objections only if the evidence objected to is offered in support of a fact the judge is considering in determining whether to grant the motion. Many judges don't have the time to rule on all evidentiary objections, including those that will have no effect on the determination of the motion.<sup>1</sup> This approach was put forward in *Biljac Assocs. v. First Interstate Bank* (1990) 218 Cal.App.3d 1410, 1419–1420, which was overruled in part and disapproved in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532 to the extent it permits the trial court to avoid ruling on specific evidentiary objections. (Under *Biljac*, rather than a ruling on each evidentiary objection, the trial court judge's statement that the summary judgment decision was based only on competent and admissible evidence would have been sufficient. (See *Biljac, supra*, 218 Cal.App.3d at p. 1419.)

Until the California Supreme Court issued its opinion in *Reid*, the effect of a trial court's failure to rule on evidentiary objections that were properly presented was unclear. Some Courts of Appeal had held that objections made in writing were waived if not raised by the objector at the hearing and ruled on by the court.<sup>2</sup> In *Reid, supra*, 50 Cal.4th at pp. 531–532, the court disapproved this prior case law as well as its own prior opinions<sup>3</sup> to the extent they held that the failure of the trial court to rule on objections to summary judgment evidence waived those objections on appeal.

The court also held that the trial court must expressly rule on properly presented evidentiary objections, disapproving a contrary procedure outlined in *Biljac*. Thus, under *Reid*, evidentiary objections made in writing or orally at the hearing are deemed “made at the hearing” under section 437c(b)(5) and (d), must be ruled on by the trial court, and if not ruled on by the trial court, are presumed to have been overruled and are preserved for appeal. “[I]f the trial court fails to rule expressly on specific evidentiary objections, it is presumed that the objections have been overruled, the trial court considered the evidence in ruling on the merits of the summary judgment motion, and the objections are preserved on appeal.” (*Reid, supra*, 50 Cal.4th at p.

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<sup>1</sup> *California Judges Benchbook: Civil Proceedings—Before Trial*, 2d ed. (CJER 2008) § 13.50 and anecdotal reports.

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

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

534.) The Supreme Court declined to address the standard of review that would apply to objections that were presumed to have been overruled, stating, “we need not decide generally whether a trial court’s rulings on evidentiary objections based on papers alone in summary judgment proceedings are reviewed for abuse of discretion or reviewed de novo.” (*Id.* at p.535.)

The *Reid* court recognized “that it has become common practice for litigants to flood the trial courts with inconsequential written evidentiary objections, without focusing on those that are critical. [Footnote omitted.] Trial courts are often faced with ‘innumerable objections commonly thrown up by the parties as part of the all-out artillery exchange that summary judgment has become.’ [Citation omitted.]” (*Reid, 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.*)

**Rule 3.1350.** To encourage attorneys to raise only objections to evidence truly in dispute, rule 3.1350 of the California Rules of Court is amended to add the following definition of “material facts”: “facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion.” The definition is based on *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274, in which the court stated, “In order to prevent the imposition of a summary judgment, the disputed facts must be ‘material,’ i.e., relate to a claim or defense in issue which could make a difference in the outcome.” The advisory committees determined that this amendment is consistent with the requirement in Code of Civil Procedure section 437c(c) that provides, in part, “In determining whether the papers show that there is no triable issue as to any material fact the court shall consider *all* of the evidence set forth in the papers, except that to which objections have been made and sustained by the court.” (Italics added.) The committees defined “material facts” to clarify that the facts to be included in a separate statement are those that show whether there is a triable issue under the statute.

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

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

Subdivision (f) is amended to add the following:

- (3) If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate

statement. The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion. Each fact must be followed by the evidence that establishes the fact. Citation to the evidence in support of each material fact must include reference to the exhibit, title, page, and line numbers.

If the material facts and supporting evidence are limited to those that are pertinent to the disposition of the motion, objections to the evidence should similarly be limited, which would further the goals of the proposal. The committees expect that these changes will clarify for attorneys filing and opposing summary judgment motions that their separate statements should address only facts claimed to be without dispute and pertinent to the court's decision on the motion. An advisory committee comment to the rule reiterates this and cites to *Los Angeles Nat. Bank* and *Reid*, stating:

Subdivision (a)(2). This definition is derived from statements in *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274 (“In order to prevent the imposition of a summary judgment, the disputed facts must be ‘material,’ i.e., relate to a claim or defense in issue which could make a difference in the outcome.”) and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533 (“[W]e 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.”).

Subdivisions (d)(2) and (f)(3). Consistent with *Reid*, these provisions are intended to eliminate immaterial facts from separate statements and thereby reduce the number of unnecessary objections to evidence.

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

The rule is also amended to eliminate one particular example of an objection on relevance grounds to evidence that is not pertinent to a decision on the motion. The advisory committees believe that, particularly in light of the proposed changes to rule 3.1350, this example is not helpful to include in the rule because the inclusion of irrelevant evidence should be rare.

These changes are intended to reduce the number of unnecessary objections and the need to rule on all objections—even those not material to disposition of the summary judgment motion—and to result in significant reduction of time spent by trial court research attorneys and judges, without causing a significant increase in appellate court time.

## **Comments, Alternatives Considered, and Policy Implications**

The proposal circulated for public comment from April 17 to June 17, 2015. Nine commentators submitted comments; six agreed with the proposal and the other three agreed but suggested modifications.<sup>4</sup> Commentators included two superior courts, the California Judges Association (CJA), the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges and Court Executives Advisory Committees, State Bar of California committees, and local bar associations. Commentators that agreed with the proposal and did not suggest any modifications included the CJA, the JRS, the Superior Courts of Los Angeles and San Diego Counties, a State Bar committee, and the Orange County Bar Association. The most significant comments are discussed below.

### **Rule 3.1350: Content of separate statement**

Discussing the amendments that address what should be in the separate statements in support of and opposition to summary judgment (subdivisions (d)(2) and (f)(3), respectively), the State Bar Committee on Administration of Justice (CAJ) and its Committee on Appellate Courts suggested limiting the text to the following: “The separate statement should include only material facts.” These commentators suggested that the additional language in the proposal that circulated, which states that the separate statement should not include “background facts or other facts that are not pertinent to the disposition of the motion,” is unclear and likely to lead to confusion. The committees believe it would be helpful to describe what should not be included in these statements. The proposed amendment is designed to give direction to attorneys to focus on what is in dispute and not include other facts. The committees therefore declined to make the specific change suggested by the commentators, but after thorough discussions, decided to shorten the text and eliminate the word “background.” The committees also believe that use of “not pertinent” is clear and declined to change it. The provisions now read “The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.”

The State Bar Litigation Section Rules and Legislation Committee suggested that subdivision (f)(3) be revised to state that the opposing party must list in its separate statement any additional material facts that it contends are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. The current rule provides only that the opposing party set out the moving party’s facts and state whether they are disputed (and if so, provide supporting evidence) or undisputed and any additional material facts that are disputed. The suggested change would add to the items to include in the separate statement in opposition undisputed facts that show the moving party should not be granted summary judgment. The commentator notes that many practitioners already do this and it is helpful to trial courts. The committees discussed this thoroughly. They noted that Code of Civil Procedure section 437c(b)(3) sets out what the opposition papers must include:

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<sup>4</sup> The text of all comments received and committee responses is included in a comment chart attached at pages 15–25.

- A response to each of the material facts contended by the moving party to be undisputed, indicating whether the opposing party agrees or disagrees that those facts are undisputed; and
- Any other material facts that the opposing party contends are disputed. Each fact claimed to be disputed must be followed by a reference to the supporting evidence.

To ensure that the rule amendment is consistent with section 437c, the committees declined to add a provision stating that the opposing party should or must include specifically any *undisputed* facts that would defeat summary judgment. The committees concluded that what is significant is whether the facts would defeat summary judgment, not whether the opposing party contends that the facts are disputed or undisputed. For this reason, the committees decided to modify the proposed amendment to the subdivision addressing the separate statement in opposition so that it provides, “If the opposing party contends that additional material facts are pertinent to the disposition of the motion, those facts must be set forth in the separate statement.” (See proposed rule 3.1354(f)(3).)

#### **Case citation for “material facts”**

CAJ also suggests adding a citation in the advisory committee comment because the case cited (for the definition of “material facts”) “merely quotes prior decisional authority” that, in turn, cites another case. Because the case cited, *Los Angeles Nat. Bank v. Bank of Canton* (1991) 229 Cal.App.3d 1267, 1274, is acceptable authority and the committees do not believe that additional authority is needed, they declined to add a citation to another case.

#### **Rule 3.1354**

Currently, rule 3.1354(b) includes among the examples of proper formatting of objections to evidence an example of irrelevant evidence and a corresponding objection on relevance grounds. CAJ does not support deletion of this example. Advisory committee members believe that this example is poor because, particularly in light of the proposed amendments to rule 3.1350, the inclusion of irrelevant evidence in separate statements should be rare, and they therefore recommend deleting it.

#### **Alternatives**

The advisory committees considered proposing the amendment of only rule 3.1350 but concluded that also amending rule 3.1354 and Code of Civil Procedure section 437c would better achieve the goals of reducing unnecessary evidentiary objections in summary judgment proceedings and the need for rulings on all evidentiary objections.<sup>5</sup> The advisory committees believe that education of the bar will be a necessary component for courts to reap the most benefits from the proposed changes but believe education alone would be insufficient to achieve the desired goals.

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<sup>5</sup> See pending legislation in [Senate Bill 470](#).

## **Implementation Requirements, Costs, and Operational Impacts**

The proposal is expected to benefit the judicial branch, especially superior courts, by reducing the time spent in deciding summary judgment motions. Addressing this topic in response to questions in the invitation to comment, the JRS commented that the proposal would have a positive operational impact on trial courts and the amendments should decrease the time that court staff, including research attorneys, spend on reviewing motions for summary judgment. The JRS noted that the operational impact will vary by court and be proportional to the volume of summary judgment motions handled by a particular court. The CJA described the amendments as “modest” and stated that it is doubtful they will substantially succeed in teaching counsel to distinguish material facts from immaterial ones. The CJA commented, nevertheless, that the amendments might help and it supports the proposal.

## **Relevant Strategic Plan Goals and Operational Plan Objectives**

This proposal is consistent with strategic Goal III, Modernization of Management and Administration, which, among other things, recommends a policy of developing and promoting “innovative and effective practices to foster the fair, timely, and efficient processing and resolution of all cases.”<sup>6</sup> It also is consistent with objective III.B.5 of the related operational plan: “Develop and implement effective trial and appellate case management rules, procedures, techniques, and practices to promote the fair, timely, consistent, and efficient processing of all types of cases.”<sup>7</sup>

## **Attachments and Links**

1. Cal. Rules of Court, rules 3.1350 and 3.1354, at pages 9–14
2. Chart of comments, at pages 15–25

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<sup>6</sup> Judicial Council of Cal., *Justice in Focus: The Strategic Plan for California’s Judicial Branch, 2006–2016* (Dec. 12, 2014), p. 20.

<sup>7</sup> Judicial Council of Cal., *Justice in Focus: The Operational Plan for California’s Judicial Branch, 2008–2011* (2008), p. 33.



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

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

2  
3 **(a) Motion Definitions**

4  
5 As used in this rule:

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

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

14  
15 **(b)–(c) \* \* \***

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

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

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

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

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

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

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

40

1 Except as provided in Code of Civil Procedure section 437c(r) and rule 3.1351, the  
2 opposition to a motion must consist of the following documents, separately stapled  
3 and titled as shown:  
4

- 5 (1) [*Opposing party's*] memorandum in opposition to [*moving party's*] motion  
6 for summary judgment or summary adjudication or both;  
7
- 8 (2) [*Opposing party's*] separate statement of undisputed material facts in  
9 opposition to [*moving party's*] motion for summary judgment or summary  
10 adjudication or both;  
11
- 12 (3) [*Opposing party's*] evidence in opposition to [*moving party's*] motion for  
13 summary judgment or summary adjudication or both (if appropriate); and  
14
- 15 (4) [*Opposing party's*] request for judicial notice in opposition to [*moving*  
16 *party's*] motion for summary judgment or summary adjudication or both (if  
17 appropriate).  
18

19 **(f) ~~Opposition to Motion~~; Content of separate statement in opposition to**  
20 **motion**  
21

22 The Separate Statement in Opposition to Motion must be in the two-column  
23 format specified in (h).  
24

- 25 (1) Each material fact claimed by the moving party to be undisputed must  
26 be set out verbatim on the left side of the page, below which must be  
27 set out the evidence said by the moving party to establish that fact,  
28 complete with the moving party's references to exhibits.  
29
- 30 (2) On the right side of the page, directly opposite the recitation of the  
31 moving party's statement of material facts and supporting evidence, the  
32 response must unequivocally state whether that fact is "disputed" or  
33 "undisputed." An opposing party who contends that a fact is disputed  
34 must state, on the right side of the page directly opposite the fact in  
35 dispute, the nature of the dispute and describe the evidence that  
36 supports the position that the fact is controverted. That Citation to the  
37 evidence in support of the position that a fact is controverted must be  
38 supported by citation include reference to the exhibit, title, page, and  
39 line numbers in the evidence submitted.  
40
- 41 (3) If the opposing party contends that additional material facts are  
42 pertinent to the disposition of the motion, those facts must be set forth  
43 in the separate statement. The separate statement should include only  
44 material facts and not any facts that are not pertinent to the disposition

1 of the motion. Each fact must be followed by the evidence that  
2 establishes the fact. Citation to the evidence in support of each material  
3 fact must include reference to the exhibit, title, page, and line numbers.  
4

5 (g)–(i) \* \* \*

6  
7  
8 **Advisory Committee Comment**  
9

10 Subdivision (a)(2). This definition is derived from statements in *L.A. Nat. Bank v. Bank of Canton*  
11 (1991) 229 Cal. App. 3d 1267, 1274 (“In order to prevent the imposition of a summary judgment,  
12 the disputed facts must be 'material,' i.e., relate to a claim or defense in issue which could make a  
13 difference in the outcome.”) and *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532–533 (Parties are  
14 encouraged “to raise only meritorious objections to items of evidence that are legitimately in  
15 dispute and pertinent to the disposition of the summary judgment motion.”)  
16

17 Subdivisions (d)(2) and (f)(3). Consistent with *Reid, supra*, these provisions are intended to  
18 eliminate from separate statements facts that are not material, and, thereby reduce the number of  
19 unnecessary objections to evidence.  
20

21 **Rule 3.1354. Written objections to evidence**  
22

23 (a) \* \* \*

24  
25 **(b) Format of objections**  
26

27 All written objections to evidence must be served and filed separately from  
28 the other papers in support of or in opposition to the motion. Objections ~~on~~  
29 to specific evidence may must be referenced by the objection number in the  
30 right column of a separate statement in opposition or reply to a motion, but  
31 the objections must not be restated or reargued in the separate statement.  
32 Each written objection must be numbered consecutively and must:  
33

- 34 (1) Identify the name of the document in which the specific material  
35 objected to is located;  
36  
37 (2) State the exhibit, title, page, and line number of the material objected  
38 to;  
39  
40 (3) Quote or set forth the objectionable statement or material; and  
41  
42 (4) State the grounds for each objection to that statement or material.  
43

44 Written objections to evidence must follow one of the following two  
45 formats:

1  
2 *(First Format):*

3 **Objections to Jackson Declaration**

4  
5 **Objection Number 1**

6  
7 “Johnson told me that no widgets were ever received.” (Jackson declaration, page  
8 3, lines 7–8.)

9  
10 **Grounds for Objection 1:** Hearsay (Evid. Code, § 1200); lack of personal  
11 knowledge (Evid. Code, § 702(a)).

12  
13 ~~**Objection Number 2**~~

14  
15 ~~“A lot of people find widgets to be very useful.” (Jackson declaration, page 17,~~  
16 ~~line 5.)~~

17  
18 ~~**Grounds for Objection 2:** Irrelevant (Evid. Code, §§ 210, 350–351).~~  
19 ~~*(Second Format):*~~

20 **Objections to Jackson Declaration**

21

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

22 **(c) Proposed order**

23  
24 A party submitting written objections to evidence must submit with the  
25 objections a proposed order. The proposed order must include places for the  
26 court to indicate whether it has sustained or overruled each objection. It must  
27 also include a place for the signature of the judge. The proposed order must  
28 be in one of the following two formats:

29  
30 *(First Format):*

31 **Objections to Jackson Declaration**

1  
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**Objection Number 1**

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

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

<b>Court’s Ruling on Objection 1:</b>	Sustained: _____ Overruled: _____
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**Objection Number 2**

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

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

<del><b>Court’s Ruling on Objection 2:</b></del>	<del>Sustained: _____ Overruled: _____</del>
--	--

*(Second Format):*

**Objections to Jackson Declaration**

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

find widgets to be very useful.”		
Date:	_____	_____ Judge

**SPR15-09**

**Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings** (amend rules 3.1350 and 3.1354)

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
1.	California Judges Association by Joan P. Weber, President	A	<p>Summary judgment and summary adjudication are possible only if the material facts are undisputed. However, neither Code of Civil Procedure section 437c nor California Rules of Court, rule 3.1350, define “material facts.”</p> <p><b><i>Description of Proposed Rule</i></b> This proposal would amend California Rules of Court, rule 3.1350 by, inter alia:</p> <ol style="list-style-type: none"><li>1. Expressly defining “material facts” as being “facts that relate to the cause of action, claim for damages, issue of duty, or affirmative defense that is the subject of the motion and that could make a difference in the disposition of the motion.</li><li>2. Including a provision that a “separate station should include only material facts and not background facts or other facts that are not pertinent to the disposition of the motion.”</li></ol> <p><b><i>Analysis of the Proposal</i></b> The goal of the proposal is to ease the burden on the Courts of ruling on motions for summary judgment and summary adjudication. It is hoped that, by defining material facts and by expressly stating that background and other immaterial facts do</p>	The committees note the commentator’s support for the proposal. No response necessary.

**SPR15-09**

**Civil Practice and Procedure: Evidentiary Objections in Summary Judgment Proceedings** (amend rules 3.1350 and 3.1354)

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

	Commentator	Position	Comment	Proposed Committee Response
			<p>not belong in separate statements of undisputed facts, counsel will be more likely to exclude immaterial facts from the separate statements, thereby both shortening the list of facts that the court must consider and eliminating facts that otherwise might draw unnecessary and time-consuming evidentiary objections.</p> <p>The proposal is part of a package addressing these motions. The other half of the package is SB 470, a Judicial Council-sponsored bill that would amend Code of Civil Procedure section 437c to provide that judges need rule only on those evidentiary objections that the judge deems material to its disposition of the motion. All other objections would be deemed to have been overruled and preserved for appeal.</p> <p>While I doubt that these modest amendments to rule 3.1350 will substantially succeed in teaching counsel to distinguish material facts from immaterial ones, it might help, and it couldn't hurt. CJA supports this proposal.</p>	
2.	Joint Rules Subcommittee of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee	A	Amending rule 3.1350 would reduce burdens on the trial courts associated with evidentiary objections in summary judgment proceedings. Trial courts	The committees note the commentator's support for the proposal.



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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			<p>encounter a lot of unnecessary information within statements of material facts that do not assist the court in deciding the motion. Many objections are unnecessary and there is no need for ruling on those objections.</p> <p>A “material fact” should not be included in the separate statement unless it tends to prove or disprove a necessary element of the cause of action/defense/claim in question.</p> <p>Amending rule 3. 1354 may, but is unlikely to accomplish the purpose of reducing time spent in deciding motions for summary judgment. Most evidentiary objections list multiple grounds for objection.</p> <p>The JRS concluded that this proposal would have a positive operational impact on trial courts. The proposed changes should decrease the time that court staff, including research attorneys, spend on reviewing motions for summary judgment. The operational impact will vary by court and be proportional to the volume of summary judgment motions handled by a particular court.</p>	<p>The committee is hopeful that this proposal and a companion proposal to amend Code of Civil Procedure section 437c will reduce the total number of evidentiary objections made and the number of objections that a court must rule on. Under the proposed legislation, multiple grounds for objection need not be ruled on if the evidence objected to isn’t material to disposition of the summary judgment motion.</p>
3.	Orange County Bar Association By Ashleigh Aitken, President	A	No specific comment.	The committees note the commentator’s support for the proposal. No response necessary.
4.	San Diego County Bar Association	AM	Finally, we understand that SPR-09 and the	

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	Appellate Practice Section		<p>related proposal to amend Code of Civil Procedure section 437c are intended to reduce the trial courts' increasing burden associated with ruling on voluminous and potentially unnecessary evidentiary objections in connection with summary judgment motions.</p> <p>Our section members report anecdotal comments offered by local judicial officers, stating that substantial judicial time and resources are squandered addressing extensive objections to evidence offered in support of or in opposition to summary judgment motions.</p> <p>It is important for the rules to address these concerns while balancing practitioners' historical concerns about the need to preserve appellate challenges to evidentiary objections where there is no express trial court ruling. We anticipate that the proposed amendment to section 437c will address this latter concern by adding language to the summary judgment statute, consistent with the holding in <i>Reid v. Google, Inc.</i> (2010) 50 Cal. 4th 512, 534, affirming that objections made in writing, or orally at the hearing, if not ruled upon, are presumed to have been overruled and preserved for appeal. However, it would also be helpful if <i>Reid's</i> recognition about the rising tide of unnecessary evidentiary objections and its</p>	<p>The proposed amendment to the statute does include a provision stating that objections not ruled on for purposes of the motion for summary judgment are deemed overruled and preserved on appeal.</p>

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			encouragement that parties "raise only meritorious objections to items of evidence that are legitimately in dispute and pertinent to the disposition of the summary judgment motion" is also incorporated into proposed Rule 3.1354 or cited in the Advisory Committee Comments to Rule 3.1354, as it is in Rule 3.1350.	The committee believes that the best place to include such a statement is in the advisory committee comment to rule 3.1350, as it addresses the content of separate statements.
5.	State Bar of California Committee on Admin. of Justice	AM	<p>The State Bar of California’s Committee on Administration of Justice (CAJ) has reviewed and analyzed the Judicial Council’s Invitation to Comment, and appreciates the opportunity to submit these comments. CAJ supports this proposal subject to the comments below.</p> <p style="text-align: center;"><u>A. Proposed amendments to California Rules of Court, rule 3.1350</u></p> <p>CAJ supports adding a definition of “Material Facts” to Rule 3.1350 and supports the proposed definition.</p> <p>With respect to the proposed changes to subdivision (d)(2) and the proposed identical sentence in the first sentence of the second paragraph of (f)(3), CAJ recommends that both sentences be limited to the following: “The separate statement should include only material facts.” CAJ believes the balance of the proposed</p>	<p><b>Subdivision (d)(2)</b> The committee used “background facts or other facts that are not pertinent to the disposition of the motion” to emphasize what should not be included. The committee believes that this description is useful but in response to the comment, shortened the statement to read, “The separate statement should</p>

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			<p>sentence (“and not background facts or other facts that are not pertinent to the disposition of the motion”) is problematic for several reasons.</p> <p>It is not clear whether “background facts” is meant to be an example of the types of facts the proposals seek to limit or whether “pertinent facts” is intended to modify “background” i.e., background facts which are themselves not pertinent. Background facts may be “material” within the meaning of the proposed new definition, and their inclusion should be guided by that definition. In addition, the statement that parties should not include facts that are “not pertinent” is likely to lead to confusion. CAJ recognized that this use of “pertinent” comes from <i>Reid v. Google, Inc.</i> (2010) 50 Cal.4th 512, but this proposal would define “material” and not “pertinent.” If the two words are intended to have the same meaning, the proposal would essentially say that parties should include only material facts, but should not include facts that are not material. If the two words are intended to have different meanings, the extra language concerning what <i>should not</i> be included becomes ambiguous, and may result in unnecessary disputes. CAJ believes that an affirmative statement in</p>	<p>include only material facts and not any facts that are not pertinent to the disposition of the motion.” “Not pertinent to the disposition of the motion” is another way of describing facts that will not make a difference in the disposition of the motion and are, therefore, not material facts.</p>

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			<p>subdivisions (d)(2) and (f)(3) as to what the separate statement should include is preferable and adds clarity to the point being made. CAJ also believes that moving parties will ultimately be self-guided by the practicality of citing only those facts, both by way of background and otherwise, that are most likely to persuade the trial court that judgment should be entered in their favor.</p> <p>With respect to the Advisory Committee Comment to subdivision (a)(2), CAJ suggests that consideration be given to adding a citation to <i>Pettus v. Standard Cabinet Works</i> (1967) 249 Cal.App.2d 64, 69. This suggestion is based upon the fact that the authority cited in support of subdivision (a)(2), <i>L.A. Nat. Bank v. Bank of Canton</i> (1991) 229 Cal.4th 512, 532-33 merely quotes prior decisional authority, i.e. <i>Burton v. Security National Bank</i> (1988) 197 CA3d 972, 978. <i>Burton</i>, in turn, cited <i>Pettus</i>. <i>Pettus</i> was felt to be preferable to citing <i>Burton</i> since <i>Burton</i> was questioned on unrelated grounds in <i>Guz v. Bechtel National</i> (2000) 24 Cal.4th 317, 351.</p> <p style="text-align: center;"><u>B. Proposed amendments to California Rules of Court, rule 3.1354</u></p>	<p>The <i>Los Angeles Nat. Bank v. Bank of Canton</i> (1991) 229 Cal.App.3d 1267 citation is acceptable authority and the committees do not think it necessary to add a citation to another case. The citation is different from the one cited by the commentator (229 Cal.App.3d 1267 compared to 229 Cal.4th 512).</p>

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			<p>CAJ does not support this part of the proposal.</p> <p>Under Evidence Code section 350, relevance remains a viable objection in summary judgment/adjudication proceedings. In light of the addition of a definition of “material facts” to rule 3.1350(a)(2), CAJ does not anticipate that retention of a relevance objection as an example would have the effect of “encouraging attorneys to list evidence in their separate statements that is not pertinent.” Instead, CAJ believes the relevance objection may become even more important as a means of <u>discouraging</u> the inclusion of facts in violation of the amended rules - given the added definition of “material facts” and the restrictive language proposed for rule 3.1350 (d)(2) and (f)(3) that separate statements should include “only” material facts.</p>	<p>Committee members believe that the example in rule 3.1354 is a poor one, particularly in light of the proposed amendments to rule 3.1350 because the inclusion of irrelevant evidence in separate statements should be rare.</p>
6.	State Bar of California Committee on Appellate Courts By John Derrick, Chair	AM	<p>The Committee supports this proposal but believes it should be modified to delete surplusage from the proposed new subdivision (d)(2) and (f)(3) of rule 3.1350 as follows: “The separate statement should include only material facts. <del>and not</del></p>	<p><b>Subdivisions (d)(2) and (f)(3)</b> The committee used “background facts or other facts that are not pertinent to the disposition of the motion” to emphasize what should not be included. The committee believes that these examples are useful, but in</p>

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			<p><del>background facts or other facts that are not pertinent to the disposition of the motion.</del>"</p> <p>The term “material facts” is accurately and sufficiently defined in proposed new subdivision (a)(2) of rule 3.1350. Further reference to “background facts” and “facts that are not pertinent . . .” in (d)(2) and (f)(3) is surplusage and will generate confusion. We recognize that the language is derived from case authority, but used here it may trigger rules of interpretation that would give “not pertinent” a meaning other than “not material.” Assuming those terms are intended to have different meanings, the difference is not clear. Also, background facts are sometimes material when combined with other facts to support an inference.</p>	<p>response to the comment shortened the statement to read, “The separate statement should include only material facts and not any facts that are not pertinent to the disposition of the motion.” “Not pertinent to the disposition of the motion” is another way of describing facts that will not make a difference in a difference in the disposition of the motion and are, therefore, not material facts.</p>
7.	State Bar of California Litigation Section Rules and Legislation Committee by Reuben A. Ginsburg, Chair	A	<p>The Committee supports the proposed revisions and believes that they appropriately address the stated purpose of reducing the burden on the trial court associated with evidentiary objections on summary judgment motions without increasing the burden on the appellate courts. Please consider the following additional suggestions.</p> <p>We would revise the final sentence in rule</p>	

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			<p>3.1350(f)(2) to parallel the language in rule 3.1350(d)(3), which we believe more accurately conveys the notion that evidence cited in the separate statement should be referenced in a particular manner. We suggest the following revisions:</p> <p><del>“That Citation to the evidence in support of the position that a fact is controverted must include reference be supported by citation to the exhibit, title, page, and line numbers.”</del></p> <p>We believe that an opposing separate statement may not only indicate which material facts are disputed and cite evidence showing a dispute, but it may also very helpfully set forth additional material facts that are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication. (See Rylaarsdam &amp; Edmon, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2014) ¶ 10:196.2, p. 10-81 [“Although neither CCP §437c nor CRC 3.1350 expressly so provides, the opposing party should also include any undisputed material facts which would <i>defeat</i> the motion and which have not been raised by the moving party”].) Many practitioners already do this, and we believe it is helpful</p>	<p>The committees made this change.</p>



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	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Proposed Committee Response</b>
			to the trial court. Accordingly, we suggest that rule 3.1350(f)(3) be revised to state that the opposing party must list in its separate statement any additional material facts that it contends are undisputed and show that the moving party is not entitled to summary judgment or summary adjudication.  Finally, we would revise the second sentence in rule 3.1354(b) as follows:  “Objections <del>on</del> <u>to</u> specific evidence . . . .”	The committees thoroughly discussed this and decided to recommend amending rule 3.1350(f)(3) to provide that the opposing party must include in the separate statement additional material facts that are pertinent to the disposition of the motion.  The committee agrees and this change has been made.
8.	Superior Court of Los Angeles County (no name indicated)	A	No specific comment.	The committees note the commentator’s support for the proposal. No response necessary.
9.	Superior Court of San Diego County by Mike Roddy, Executive Officer	A	No specific comment.	The committees note the commentator’s support for the proposal. No response necessary.