

Appellate Tips for Trial Lawyers

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California civil and criminal litigation overlap in a crucial area: preserving your record for appeal. Although this series of short articles is mainly designed for civil trial lawyers, some "best practices" apply in every trial. Keep an eye on what our appellate-lawyer writers have to say about how to preserve your trial court victory or how to lay the groundwork for a successful challenge when you have lost.

Part 2: Getting It Right—Challenging A Statement Of Decision

by Robert Olson

Part 1 of this Appellate Tip addressed when and how to request a statement of decision that contains the trial court's findings of fact and the grounds supporting the judgment. This Part 2 focuses on strategies for drafting a proposed statement of decision as well as crafting an objection to one once drafted and filed.

Purpose and Craft

Trial courts can, and often do, delegate the task of drafting the statement of decision to the prevailing party (Cal. Rules of Court, Rule 3.1590(e)). The draft must be filed within 15 days of the tentative decision. Otherwise, any party can submit a proposed statement of decision (*id.*). The proposed statement of decision should provide a factual and legal explanation for "each of the principal controverted [material] issues at trial" (Code Civ. Proc. §632). It need only address "material issue[s] of fact" (*Kuffel v. Seaside Oil Co. (1977) 69 Cal. App. 3d 555, 565*, (emphasis added)). Stick to ultimate facts and do not get mired in evidentiary minutia. The trial court does not need to "make findings with regard to detailed evidentiary facts or to make minute findings as to individual items of evidence" (*Kazensky v. City of Merced (1998) 65 Cal. App. 4th 44, 67*).

The proposed statement of decision should 1) address all issues specified in the request, 2) be fair and honest as to what the trial court found, and 3) address *factual* issues. Other legal arguments and citations can be fleshed out on appeal. The statement should also contain the standard applied by the trial court, if there is a dispute about that standard.

Object

A party must object to a proposed statement of decision within 15 days of its service (Cal. Rules of Court, Rule 3.1590(f)). It is crucial to make appropriate objections because, without them, the appellate presumptions regarding any ambiguities or omissions will favor the respondent (Code Civ. Proc. § 634; *In re Marriage of Arceneaux (1990) 51 Cal. 3d 1130, 1132-33*). This is not the time to argue the merits of the trial court's decision. The *only* authorized ground for objection is that the proposed statement of decision "does not resolve a controverted issue," either by ambiguity or omission (Code Civ. Proc. § 634).

Often the objecting party's interest is that the trial court will fail to clear up identified ambiguities and omissions. When that happens, the usual presumptions favoring the judgment do not apply: "[It] shall not be inferred on appeal . . . that the trial court decided in favor of the prevailing party as to those facts or on that issue" (Code Civ. Proc. § 634; *In re Marriage of Arceneaux (1990) 51 Cal. 3d*

[1130, 1132-33\).](#)

A party may also object that the proposed statement of decision is contrary to what the trial court found or makes a finding on a subject that the trial court did not reach or decide.

Focus objections on unresolved or ambiguously resolved factual issues (including subsidiary *material* issues), not on evidentiary detail. Objections asking the trial court to respond to scores of detailed points don't work (see [Golden Eagle Ins. Co. v. Foremost Ins. Co. \(1993\) 20 Cal. App. 4th 1372, 1380](#)). To stay focused, consider titling the document "Objections to Omissions and Ambiguities in the Proposed Statement of Decision" or "Objections to Inaccuracies, Omissions, and Ambiguities in the Proposed Statement of Decision." A party must pinpoint specific deficiencies, placing the trial court on notice as to what it needs to correct ([Ermoian v. Desert Hosp. \(2007\) 152 Cal. App. 4th 475, 498-99](#)).

Neither the initial request nor a proposed alternative statement of decision substitutes for the necessary objections (see [Golden Eagle Ins. Co. v. Foremost Ins. Co. \(1993\) 20 Cal. App. 4th 1372, 1380](#)).

Respond

The prevailing party should embrace the objections as an opportunity to improve the statement of decision, proffering an amended statement resolving any identified ambiguities or omissions (see [Bay World Trading, Ltd. v. Nebraska Beef, Inc. \(2002\) 101 Cal. App. 4th 135, 140-41](#)). In doing so, however, the party should not pin down the trial court any more than necessary to respond to the identified ambiguities or omissions.

Appear

A hearing on objections may be held but is not required (Cal. Rules of Court, Rule 3.1590(i)). Often the objecting party's true goal is *not* to have the ambiguities or omissions resolved. If so, it may not want a hearing or may wish to submit on its objections. By contrast, the prevailing party should encourage the court to resolve any lingering ambiguities or omissions.

Last Chance

After entry of judgment, you can still call the trial court's attention to omissions and ambiguities in the statement of decision—and thereby invoke the exception of Code of Civil Procedure Section 634—in a motion for new trial (Code Civ. Proc. § 657) or to set aside the judgment (Code Civ. Proc. § 663) (see also Code Civ. Proc. § 634). In ruling on either motion, the trial court may amend the statement of decision (Code Civ. Proc. §§ 662, 663).



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