TIPS OF THE TRADE – USING THE STATEMENT OF DECISION TO MAXIMIZE YOUR CHANCES OF WINNING A TRUST OR PROBATE APPEAL

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Statements of decision play a critical role in an appeal following a court trial: they frame the appellate court's review, and they set the parameters for what inferences the court will draw in favor of the appealed order. That makes the statement of decision process an important tool for litigators seeking to position their cases for appellate success.

Understanding statements of decision and the strategic opportunities they present is especially valuable for lawyers who handle probate proceedings, where court trials are common and there are more appealable orders than in civil cases. This article provides a roadmap of the process and key considerations along the way.

I. BACKGROUND

A statement of decision is a document explaining "the factual and legal basis for [the court's] decision as to each of the principal controverted issues at trial."[1]

Statements of decision are available in any proceeding where the court determines a question of fact, whether in the context of a traditional issue at law or an equitable issue.[2] Many trust and probate proceedings fall under this umbrella, because, with the exception of the issue of appointment of a conservator, there is no general right to a jury trial under the Probate Code.[3] Will contests and petitions brought under Probate Code sections 850 and 17200 are just a few examples of proceedings where parties should consider seeking statements of decision.

Statements of decision generally are *not* available for routine motions. There may be an exception when the court makes a factual finding that adversely affects a party's rights if appellate review cannot be accomplished without express findings, but such situations are the exception to the rule.[4]

II. WHY STATEMENTS OF DECISION MATTER

Understanding why statements of decision matter requires some background on the lens through which an appellate court views the lower court's order or judgment.

A trial court's factual findings are reviewed for substantial evidence.[5] Under that standard, review is limited to whether there is any evidence that, if believed, would support the trial court's findings.[6] It does not matter whether there is *also* evidence that would support different findings. If there is evidence supporting the trial court's findings, they will be affirmed.[7]

Where there is no statement of decision, the reviewing court will presume the trial court's order is correct and the trial court made all factual findings necessary to support the judgment.[8] In other words, "the necessary findings of ultimate facts will be implied and the only issue on appeal is whether the implied findings are supported by substantial evidence."[9]

A statement of decision alters this standard. The statement of decision is still presumed to be correct, like any other order or judgment.[10] But its express findings may reveal an error, for example, that a court presented with several alternative theories relied only on a theory that was invalid or unsupported by evidence. If there was no statement of decision, the appellate court would presume the trial court reached the alternative, valid ground and would affirm on that basis. There can be no such presumption, however, when a statement of decision expressly shows otherwise.

Statements of decision also impact the doctrine of implied findings in another way. If a statement of decision omits an issue, the reviewing court still will infer factual findings to support the judgment and review them under the substantial evidence standard, with one important exception.[11] If t*he appellant timely brought a material omission to the trial court's attention before the statement of decision was finalized*, the reviewing court will not imply findings to support the judgment on that issue.[12] Identifying omissions and ambiguities, and thereby avoiding implied findings in favor of the judgment, is a losing party's primary goal in the statement of decision process.

III. SHOULD YOU REQUEST A STATEMENT OF DECISION?

Trial courts do not have to issue a statement of decision unless a party timely requests one. There lies the first strategic decision in the process — whether to request a statement.

The prevailing party ordinarily *should not* request a statement of decision. Without a statement, the reviewing court

will infer the trial court resolved every factual dispute in the prevailing party's favor and will review those inferred findings under a favorable standard of review.

Conversely, the losing party *should* request a statement of decision, because the statement may limit the inferences against it.

The challenge in applying these rules of thumb is that, as discussed below, the deadline for requesting a statement of decision may arrive before it is clear which side will prevail. In that situation, the conservative route is to request a statement of decision, thereby mitigating the impact of a potential loss.

IV. HOW TO REQUEST A STATEMENT OF DECISION

The deadline for the request depends on the length of the proceeding.

For court trials that conclude "within one calendar day or in less than eight hours over more than one day," a statement of decision request must be made *before the court deems the matter submitted for decision*.[13]

Courts sometimes signal their likely ruling before deeming a matter submitted. If so, that signaling may inform your decision whether to request a statement of decision. (Again, the general rule of thumb is to ask for a statement of decision if you are likely to be on the losing side.) But absent such signaling, you will have to decide whether to request a statement of decision without knowing who will prevail. The prudent approach in this situation is still to request a statement because you will want it if you end up as the appellant.

For longer trials, the request can be made *after* the parties know the court's tentative decision, namely, "within 10 days after the court announces a tentative decision."[14] If the court serves its tentative decision by mail, the deadline is extended by an additional five days.[15]

These deadlines are important. Although the trial court *can* extend the deadlines before entry of judgment upon a showing of good cause, it is not required to do so.[16] A party who fails to timely request a statement of decision therefore risks waiving the right to receive one.[17]

The content of a request also is important. A request must specify the controverted factual issues to be included in the statement.[18] Within 10 days, other parties may propose additional issues to be addressed.[19]

V. THE PROPOSED STATEMENT

For a proceeding lasting less than one day or eight hours, the court may make its statement of decision orally.[20] For all other proceedings, the statement must be written. The court may prepare a proposed statement itself, or assign the drafting to the prevailing party.[21]

A proposed statement of decision should include the factual and legal basis for the court's findings on each principal controverted *material issue of fact*, consistent with the court's tentative ruling. The statement does not have to include findings on detailed evidentiary facts or on individual items of evidence; it need only dispose of the basic factual issues in the case.[22]

A proposed statement of decision is due within 30 days after service of the tentative decision. If the party assigned to draft it misses that deadline, any other party may submit its own proposal.[23]

VI. OBJECTIONS TO THE PROPOSED STATEMENT

Once the proposed statement of decision is served, the parties have 15 days to serve and file objections.[24]

In drafting objections, resist the urge to reargue the merits of the case. The point of these objections is *not* to change the court's ruling. Rather, the losing party's goal is to identify material issues that the court has not addressed, or has addressed ambiguously.

Accordingly, stick to identifying ambiguities or omissions on *material* points, including alternative theories that the proposed statement does not address. Avoid getting bogged down in evidentiary detail or interrogatory-style questions; focus instead on broad issues, for example, "The proposed statement fails to resolve how the breaches of duty caused plaintiff's claimed damages." Ask that the court make a finding as to each omitted or ambiguous point, or an explicit statement that the trial court has not reached the point.

The prevailing party should take the other side's objections seriously. This is an opportunity to plug any holes in the statement. If the objections identify omissions or ambiguities on arguably material facts, suggest an amendment that would resolve the omission or ambiguity in your favor.

The trial court can choose whether to hold a hearing on objections to the proposed statement of decision.[25] It may be in the objecting party's best interest *not* to have a hearing. Unless the trial court is prepared to rule in the objecting party's favor on an omitted or ambiguous issue, the best result is for the trial

court to disregard the objections. That way, the party preserves for appeal its position that some material issue was not decided against it.

If no objections are filed, or after considering any objections that were filed, the trial court must finalize and enter its statement of decision, followed by a judgment. The aggrieved party then can appeal.

VII. EFFECT OF ERRONEOUS FAILURE TO ISSUE A STATEMENT

Perhaps because the statement of decision process has many nuances, procedural missteps in this area are common. Courts sometimes fail to issue a statement of decision at all despite a timely request, skip straight to issuing a purportedly final statement without allowing for objections, or issue a judgment before the time for objections expires.

In many cases, California courts have treated these errors as requiring automatic reversal on appeal.[26] In 2017, however, the Supreme Court rejected that line of authority and held that the trial court's failure to issue a requested statement of decision is *not* per se reversible error.[27] The new decision, *F.P. v. Monier*, rests on the California Constitution's dictate that a judgment cannot be reversed for procedural error unless the error was prejudicial.[28]

Monier makes clear that the trial court's erroneous failure to issue a timely requested statement of decision is now subject to harmless error review, just like any other procedural irregularity.[29] Statement of decision procedural missteps will require reversal only if they prevent the appellate court from effectively reviewing material issues.[30] For example, if the trial court judgment awards a lump sum, the absence of a statement of decision explaining the allocation between general and special damages leaves the reviewing court "'unable to review the sufficiency of the award properly by examining its various components in light of the evidentiary support for each of them.'"[31] In that situation, the appellate court may remand the case for preparation of a statement of decision. But in many other situations, a procedural irregularity—such as entering judgment before the time to file objections expires—may be deemed harmless.[32]

VIII. CONCLUSION

Although the statement of decision process can be a trap for the unwary, it is a powerful strategic tool for those who understand it. Appeals are uphill battles. An appellant who timely requests a statement of decision and objects to material ambiguities and omissions in it starts in a stronger position than one who does not.

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1 Code Civ. Proc., section 632.

2 Code Civ. Proc., section 632.

3 Prob. Code, section 825.

4 *Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 660.

5 *Estate of O'Connor* (2017) 16 Cal.App.5th 159, 164.

6 *Fariba v. Dealer Services Corp.* (2009) 178 Cal.App.4th 156, 170.

7 *Ibid.*

8 *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267.

9 *Ibid.*

10 *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.

11 *In re Marriage of Arceneaux, supra*, 51 Cal.3d at p. 1133; *Estate of O'Connor, supra*, 16 Cal.App.5th at p. 164.

12 *Ibid.*

13 Code Civ. Proc., section 632; Cal. Rules of Court, rule 3.1590, subd. (n).

14 Code Civ. Proc., section 632; Cal. Rules of Court, rule 3.1590, subd. (d).

15 Code Civ. Proc., section 1013; *Staten v. Heale* (1997) 57 Cal.App.4th 1084, 1089.

16 Cal. Rules of Court, rule 3.1590, subd. (m).

17 *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140.

18 Cal. Rules of Court, rule 3.1590, subd. (d).

19 Code Civ. Proc., section 632; Cal. Rules of Court, rule 3.1590, subd. (d).

20 Code Civ. Proc., section 632; Cal. Rules of Court, rule 3.1590, subd. (n).

21 Cal. Rules of Court, rule 3.1590, subd. (f).

22 *Bandt v. Board of Retirement, San Diego County Employees Retirement Ass'n* (2006) 136 Cal.App.4th 140, 162; *Kazensky v. City of Merced* (1998) 65 Cal.App.4th 44, 67; *Bauer v. Bauer* (1996) 46 Cal.App.4th 1106, 1118.

23 Cal. Rules of Court, rule 3.1590, subd. (f).

24 Cal. Rules of Court, rule 3.1590, subd. (g).

25 Cal. Rules of Court, rule 3.1590, subd. (k).

26 *F.P. v. Monier* (2017) 3 Cal.5th 1099, 1109 (collecting cases).

27 *Id.* at p. 1108.

28 *Id.* at p. 1113 (*citing* Cal. Const., art. VI, § 13).

29 *Id.* at p. 1108.

30 *Id.* at p. 1116.

31 *Id.* at p. 1115 (*quoting Gordon v. Wolfe* (1986) 179 Cal.App.3d 162, 167-68).

32 See, e.g., *In re Marriage of Steiner and Hosseini* (2004) 117 Cal.App.4th 519, 524-525; *Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292.