

RESOLUTION 02-08-2017

DIGEST

Rules of Court: Evidentiary Objections in Law and Motion

Adds California Rules of Court, rule 3.1307 to provide requirements for evidentiary objections in law and motion.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution adds California Rules of Court, rule 3.1307 to provide requirements for evidentiary objections in law and motion. This resolution should be approved in principle because it conforms current practice for evidentiary objections in summary judgment motions to other motions where evidentiary issues may be of consequence.

Current summary judgment motion practice requires parties submit any written evidentiary objections with the objecting party’s opposition or reply or to ensure a court reporter is present to report the oral proceedings if the party chooses to make oral evidentiary objections. However, the procedure is unclear in relation to evidentiary objections on other motions which may require evidentiary decisions by the court. Most reputable counsel already apply the evidentiary objection scheme in summary judgment motions to other motions and on that basis alone, this resolution makes sense and should be approved in principle. Unscrupulous counsel may attempt to take advantage of the lack of proscribed rules and sandbag opposing counsel by raising oral evidentiary objections when there is no court reporter present to report the proceedings. Elimination of that practice would occur with the adoption of this proposed rule, which is an additional ground for approval in principle.

Adopting this resolution also aids in appellate review. The resolution provides a clear practice for written and oral evidentiary objections that ensures an adequate record for review of all motions where such objections are made and ruled on by the trial court. This allows the reviewing court a clean record upon which to assess the evidentiary rulings. It avoids the prospect of the appellate court remanding simply for clarification on evidentiary rulings.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that the Judicial Council add California Rules of Court, rule 3.1307 to read as follows:

- 1 Rule 3.1307
- 2 (a) A party desiring to make objections to evidence in the papers on a motion must either:
- 3 (1) Submit objections in writing as provided in subsection (b) or;

4 (2) Make arrangement for a court reporter to be present at the hearing. Evidentiary
5 objections not made in writing as provided by this Rule or at the hearing shall be deemed
6 waived.

7 (b) Unless otherwise excused by the court on a showing for good cause, all written
8 objections to evidence in support of or in opposition to a motion must be served and filed at the
9 same time of the objecting party's opposition or reply papers are served and filed. The written
10 objections must be in the format provided by Rule 3.1354(b).

11 (c) In granting or denying a motion, the court need rule only on those objections to
12 evidence that it deems material to its disposition of the motion. Objections to evidence that are
13 not ruled on for purposes of the motion shall be preserved for appellate review.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Although there are specific rules on how to make and rule upon evidentiary objections in motions for summary judgment and anti-SLAPP motion, the law is silent as to all other motions. There needs to be some sort of mechanism in place to give some structure to the attorneys on how to make those objections and guidance for the court on when it needs to rule on those objections, as set forth in the *Los Angeles Lawyer* article Evidently Objectionable (Vivian F. Wang, September 2015).

The Solution: This resolution creates a rule that addresses how and when evidentiary objections can be made and when judges have to rule on those objections. This resolution mirrors the rules concerning evidentiary objections in motions for summary judgment as set forth in Code of Civil Procedure section 437c and California Rules of Court, rule 3.1352, et. seq.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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