Journal of Consumer Attorneys Associations for Southern California
ADVOCATE
December 2022

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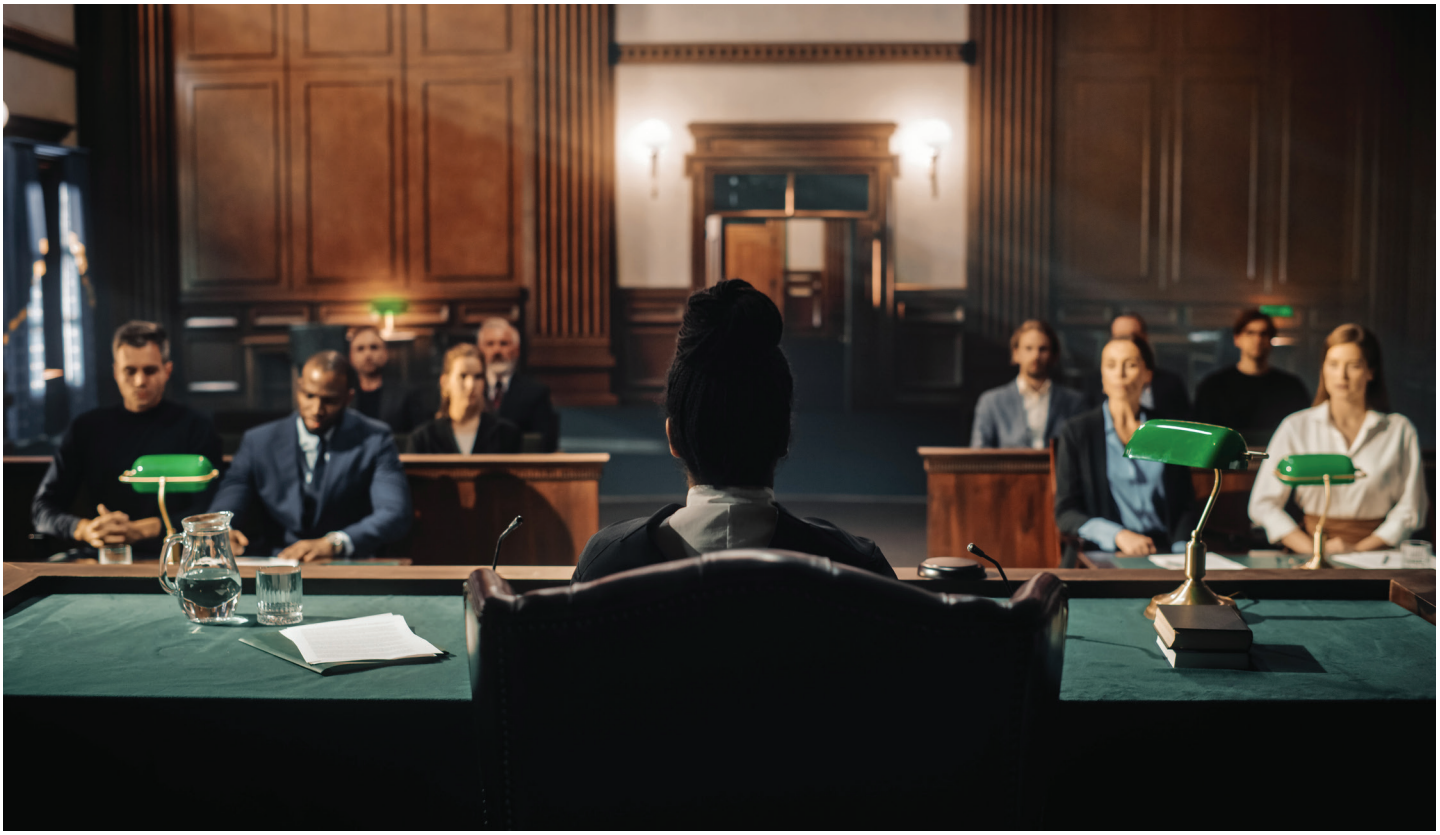

Requesting the statement of decision

A PROCESS THAT CAN PRESERVE, IF NOT ENHANCE, YOUR CHANCES ON APPEAL AFTER A BENCH TRIAL GOES AWRY

Following a multi-day bench trial, the trial court announces a tentative decision favoring your opponent. Really? In that singular moment, your worst fears are confirmed, i.e., the trial court simply got wrong what you had believed to be a patently obvious case. You resolve to take the matter up immediately. But tap the brakes. To have a shot on appeal, you first need to obtain a statement of decision to crystalize for the appellate court the trial court's misapplication of the law, the facts, or both.

In this article, we explain what a statement of decision is, why you need one, and the steps involved in procuring and objecting to one. Although understanding the purpose of a statement of decision and the process for obtaining one is perhaps a mundane subject for discussion, the bottom line is that your potential for appellate success may well turn on the actions you take before you even file the notice of appeal.

What is a statement of decision and why do you need one?

Upon the request of any party in a nonjury trial, the trial court "shall issue a statement of decision explaining the factual and legal basis for its decision as to each of the principal controverted issues." (Code Civ. Proc., § 632; see, e.g., *Schmidt v. Superior Court* (2020) 44 Cal.App.5th 570, 585; *Muzquiz v. City of Emeryville* (2000) 79 Cal.App.4th 1106, 1124 (*Muzquiz*); see *Onofrio v. Rice* (1997) 55 Cal.App.4th 413, 425 ["purpose of the statement is to provide an explanation of the factual and legal basis for the court's decision"].)

A statement of decision is prepared for the benefit of both the trial court and the parties. (*Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 126 (*Whittington*).)

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"'To the court it gives an opportunity to place upon [the] record, in definite written form, its view of the facts and the law of the case, and *to make the case easily reviewable on appeal* by exhibiting the exact grounds upon which judgment rests. To the parties, *it furnishes the means, in many instances, of having their cause reviewed without great expense*. It also furnishes to the losing party a basis of his motion for a new trial; he is entitled to know the precise facts found by the court before proceeding with his motion for new trial, in order that he may be able to point out with precision the errors of the court in matters either of fact or law. [Citation.]' [Citations.]" (*Id.* at pp. 126-127.) For the prevailing party, forgoing a statement of decision may seem like the best option. But, if one is requested, the prevailing party, through the statement of decision process, may be able to buttress its position and establish the impenetrability of the judgment in its favor, potentially staving off an appellate challenge. Additionally, given the statement of decision is the means by which the trial court speaks directly to the appellate court, the prevailing party may wish to influence that conversation.

At bottom, the statement of decision provides a roadmap of the case for the Court of Appeal so that it properly can review the trial court's factual findings and legal conclusions. (*In re Marriage of Sellers* (2003) 110 Cal.App.4th 1007, 1010 ["statement of decision is as much, or more, for the benefit of the Court of Appeal as for the parties"]; *Gruendl v. Oewel Partnership, Inc.* (1997) 55 Cal.App.4th 654, 661 (*Gruendl*) ["One of the primary purposes of a statement of decision is to facilitate appellate review"]; *People v. Landlords Professional Services, Inc.* (1986) 178 Cal.App.3d 68, 70 (*Landlords*) [same].)

For example, one of the most important aspects of a statement of decision is that it enables a party to avoid the doctrine of implied findings. (*Gordon v. Wolfe* (1986) 179 Cal.App.3d 162, 168 (*Gordon*) [absent a statement of decision, "the judgment is effectively insulated from review"].) When a party fails to request a statement of decision and then appeals from the judgment, the appellate court will "presume that the trial court made all factual findings necessary to support the judgment for which substantial evidence exists in the record. 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." (*Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 267; see also, e.g., *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 311; *In re Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 61 (*Fladeboe*).) Thus, a party who fails to request a statement of decision cannot obtain reversal of the judgment based on the absence of a necessary finding by the trial court because, if supported by substantial evidence, the appellate court will imply that finding.

Moreover, the Court of Appeal's ability to rely on inferences from the record will be dictated by whether the trial court properly addressed and resolved the issues raised in the request for statement of decision. As such, "[w]here [the] statement of decision sets forth the factual and legal basis for the decision, any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision." (*In re Marriage of Hoffmeister* (1987) 191 Cal.App.3d 351, 358.) In contrast, however, "[w]hen a statement of decision does *not* resolve a controverted issue, or if the statement is ambiguous and the record shows that the omission or ambiguity was brought to the attention of the trial court . . . , 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, italics added; see *In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133 (*Arceneaux*) [When "omissions or ambiguities in the statement are timely brought to the trial court's attention, the appellate court will *not* imply findings in favor of the prevailing party" (italics added)]; *Ruiz v. County of San Diego* (2020) 47 Cal.App.5th 504, 521 & fn. 11.)

Indeed, when a trial court fails to provide required written findings on material issues, "[r]eversal is compelled if there was evidence introduced on such issues and this evidence was sufficient to have sustained [a] finding in favor of the party complaining." (*Duff v. Duff* (1967) 256 Cal.App.2d 781, 785 (*Duff*); see *Williams v. Williams* (1971) 14 Cal.App.3d 560, 566, fn. 1.) For example, "[t]he failure to make a finding on the affirmative defense, when supported by the evidence, may well vitiate the judgment." (*Duff*, at p. 786 [statute of limitations and laches defenses were material and required findings]; see also, e.g., *Sperber v. Robinson* (1994) 26 Cal.App.4th 736, 745; *Macmorris Sales Corp. v. Kozak* (1968) 263 Cal.App.2d 430, 440-442 ["failure to make any finding on equitable issues when they are material is reversible error"]; *Mitidiere v. Saito* (1966) 246 Cal.App.2d 535, 539.)

Finally, when a statement of decision clearly expresses the legal and factual bases for the trial court's resolution of controverted issues, an appellate court will not imply findings the trial court did not make. (See *Lafayette Morehouse, Inc. v. Chronicle Publishing Co.* (1995) 39 Cal.App.4th 1379, 1384 ["When the record clearly demonstrates what the trial court did, we will not presume it did something different"]; *Paterno v. State of California* (2003) 113 Cal.App.4th 998, 1015 [same]; see also *In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 293-294 ["statement of decision may reveal that the trial court made factual findings in favor of the prevailing party on some disputed issues but not others, thus depriving the prevailing party of the benefit of inferred findings in its favor"].)

In what sort of proceedings may a statement of decision be requested?

Subject to statutory exceptions, a statement of decision is required following only a "trial" turning on

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disputed facts. (Code Civ. Proc., § 632; *Lavine v. Hospital of the Good Samaritan* (1985) 169 Cal.App.3d 1019, 1026 (*Lavine*).) The trial need not be a full trial, such as when a trial is limited to the question of damages. (*Gordon, supra*, 179 Cal.App.3d at p. 167.) A request for a statement of decision should follow a bifurcated trial when designated factual issues were tried separately. (Cal. Rules of Court, rule 3.1591(a)-(c).) A hearing on a petition for writ of administrative mandamus is a "trial of a question of fact" and warrants a statement of decision. (*Giuffre v. Sparks* (1999) 76 Cal.App.4th 1322, 1326, fn. 3.) Further, per statute, a request for a statement of decision should be made when a trial has been cut short by a motion for judgment. (Code Civ. Proc., § 631.8; *Tusher v. Gabrielsen* (1998) 68 Cal.App.4th 131, 140, fn. 10; *East-West Capital Corp. v. Khourie* (1970) 10 Cal.App.3d 553, 556.) But, when the matter at issue before the court is purely legal, i.e., not factual, a statement of decision is not required. (*Kroupa v. Sunrise Ford* (1999) 77 Cal.App.4th 835, 842; *Enterprise Ins. Co. v. Mulleague* (1987) 196 Cal.App.3d 528, 540.)

Moreover, a trial court generally is not required to issue a statement of decision after a ruling on a motion (except on a motion for judgment or when otherwise specified by statute), but can exercise its discretion to do so. (*In re Marriage of Feldman* (2007) 153 Cal.App.4th 1470, 1497; *In re Marriage of Turkanis & Price* (2013) 213 Cal.App.4th 332, 353-354; *Lavine, supra,* 169 Cal.App.3d at p. 1026.) Some courts have extended latitude when a motion involves "sufficient[ly] important" issues that necessarily require resolution of factual disputes. (See *Metis Development LLC v. Bohacek* (2011) 200 Cal. App.4th 679, 688-689 [petition to compel arbitration turning on factual matters]; *Gruendl, supra*, 55 Cal.App.4th at pp. 660-661 [motion to amend judgment to add judgment debtor on estoppel or alter ego theory].)

The rationale for statements of decision following motions turning on factual disputes is that, absent a statement of decision, effective appellate review would be impossible. (*Gruendl,* at p. 661; *In re Marriage of Askmo* (2000) 85 Cal.App.4th 1032, 1040.) Nevertheless, at least one court has rejected this view, holding that statements of decision are not required even if the motion involves extensive hearings and resolves factual questions. (*Landlords, supra*, 178 Cal.App.3d at p. 72.)

Of course, a statement of decision should be requested in specified proceedings when legislatively mandated. (See, e.g., Code Civ. Proc., §§ 631.8 [motion for judgment], 1291 [motion to compel arbitration]; Fam. Code, §§ 2127 [relief from judgment], 3654 [motion to modify, terminate, or set aside support].)

What is the timing for a request for a statement of decision?

The trial court must issue a statement of decision only when a party makes a timely request. (Code Civ. Proc., § 632.) If a timely request is made, a statement of decision is mandatory. (*Karlsen v. Superior Court* (2006) 139 Cal.App.4th 1526, 1530-1531.) The court can extend the time for making a request on good cause shown. (Cal. Rules of Court, rule 3.1590(m).) Failure to make a timely request forfeits a party's right to a statement of decision. (*University of San Francisco Faculty Assn. v. University of San Francisco* (1983) 142 Cal.App.3d 942, 946.) The trial court, however, may exercise its discretion to issue one sua sponte. (*Ochoa v. Anaheim City School Dist.* (2017) 11 Cal.App.5th 209, 235; *In re Marriage of Rising* (1999) 76 Cal.App.4th 472, 476, fn. 7.)

The applicable time frame for making a request for statement of decision turns on the trial's length. (Code Civ. Proc., § 632; *Jones v. Adams Financial Services* (1999) 71 Cal.App.4th 831, 840.) "The request must be made within 10 days after the court announces a tentative decision unless the trial is concluded within one calendar day or in less than eight hours over more than one day, in which event the request must be made prior to the submission of the matter for decision." (Code Civ. Proc., § 632; see also *id*. at § 1013a [service by mail]; Cal. Rules of Court, rule 3.1590(d) & (n).)

The trial court can announce the tentative decision orally in open court in the presence of all parties or by written statement filed with the clerk. (Cal. Rules of Court, rule 3.1590(a); *Horning v. Shilberg* (2005) 130 Cal.App.4th 197, 203 (*Horning*).) If the trial court reserves a ruling on some issues, the 10 days commence after the court completes its announcement of its decision on all reserved issues. (*Wallis v. PHL Associates, Inc.* (2013) 220 Cal.App.4th 814, 826.)

A request for statement of decision can be oral or written. (*Whittington, supra,* 234 Cal.App.3d at p. 126; *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 284; but see *Martinez v. County of Tulare* (1987) 190 Cal.App.3d 1430, 1434 [dicta stating that request "must be in writing, unless otherwise agreed"].) A written request is deemed "made" when received by the courtroom clerk. (See *Staten v. Heale* (1997) 57 Cal.App.4th 1084, 1090-1091; *Gordon, supra,* 179 Cal.App.3d at p. 167.)

In assessing whether a trial's length exceeded one calendar day, the focus is on the amount of time the court was in session, as calculated by the clerk. (*In re Marriage of Gray* (2002) 103 Cal. App.4th 974, 977.) A trial commences with the opening statement, or if there were none, when the first witness was sworn or evidence was admitted. (Code Civ. Proc., § 581, subd. (a)(6).) A matter is deemed submitted on the date when (1) the court orders the matter submitted or (2) the final paper, i.e., post-trial brief, is required to be filed or the date argument is heard, whichever is later. (Cal. Rules of Court, rule 2.900(a)(1)-(2); *In re Marriage of Gray,* at p. 977.)

Finally, the court can supplant a party's need to request a statement of decision by providing in its tentative decision that: "(1) . . . it is the court's proposed statement of decision, subject to a party's objection . . .; (2) . . . the court will prepare a statement of decision; (3) . . . a party [is] to prepare a statement of decision; or (4) . . . the tentative

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decision will become the statement of decision unless, within 10 days after announcement or service of the tentative decision, a party specifies those principal controverted issues as to which the party is requesting a statement of decision or makes proposals not included in the tentative decision." (Cal. Rules of Court, rule 3.1590(c).)

What weight does the tentative decision carry?

Absent a stipulation to the contrary, a tentative decision "does not constitute a judgment and is not binding on the court." (Cal. Rules of Court, rule 3.1590(b); see *In re Marriage of Hafferkamp* (1998) 61 Cal.App.4th 789, 793-794; *Armstrong v. Picquelle* (1984) 157 Cal.App.3d 122, 127-128.) Because a tentative decision is not binding, the court can modify it before it enters judgment (*Horning, supra,* 130 Cal.App.4th at p. 203; *Miramar Hotel Corp. v. Frank B. Hall & Co.* (1985) 163 Cal.App.3d 1126, 1129 (*Miramar Hotel*)), or enter a contrary judgment (*Canal-Randolph Anaheim, Inc. v. Wilkoski* (1978) 78 Cal.App.3d 477, 494). A tentative decision does not constitute a final statement of decision and cannot be used to support or impeach the final statement of decision, let alone fill in gaps in the findings. (*Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1756; *In re Marriage of Ditto* (1988) 206 Cal.App.3d 643, 646-647.)

What content must a statement of decision include?

A request for statement of decision, whether oral or written, must specify the principal controverted issues the court should address. (Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590(d).) The principal controverted issues are the ultimate factual and legal bases for the court's decision, i.e., "those on which the outcome of the case turns." (*Vukovich v. Radulovich* (1991) 235 Cal.App.3d 281, 295; see also *Ribakoff v. City of Long Beach* (2018) 27 Cal.App.5th 150, 163 (*Ribakoff*) [ultimate rather than evidentiary facts must be stated]; *Central Valley General Hospital v. Smith* (2008) 162 Cal.App.4th 501, 513 [core facts are the essential elements of a claim]; *Wolfe v. Lipsy* (1985) 163 Cal.App.3d 633, 643, disapproved on other grounds in *Droeger v. Friedman, Sloan & Ross* (1991) 54 Cal.3d 26, 36-39.) A party's failure to specifically identify an issue in its request for a statement of decision constitutes a forfeiture of the issue. (*Cheema v. L.S. Trucking, Inc.* (2019) 39 Cal.App.5th 1142, 1152.) A general request does not compel a statement on all material controverted issues. (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1292-1293.)

The court is not required to address each question raised in a request for statement of decision. (*Ribakoff, supra,* 27 Cal.App.5th at p. 163; *In re Marriage of Williamson* (2014) 226 Cal.App.4th 1303, 1319; *Hellman v. La Cumbre Golf & Country Club* (1992) 6 Cal.App.4th 1224, 1230; see also *Thompson v. Asimos* (2016) 6 Cal.App.5th 970, 983; *Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 500 (*Ermoian*); *Muzquiz, supra,* 79 Cal.App.4th at p. 1126.) To the contrary, a request for statement of decision cannot "interrogate the judge" on evidentiary matters. (*People v. Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 525, overruled on other grounds in *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 184-185; see also *In re Marriage of Falcone & Fyke* (2012) 203 Cal.App.4th 964, 981-982.)

When a party has timely requested a statement of decision, any other party may make proposals as to the content of the statement. (Code Civ. Proc., § 632; Cal. Rules of Court, rule 3.1590(e); *Bay World Trading, Ltd. v. Nebraska Beef, Inc.* (2002) 101 Cal.App.4th 135, 140 (*Bay World*).) Thereafter, the trial court can prepare the statement of decision itself or designate a party to prepare it and the judgment. (Cal. Rules of Court, rule 3.1590(c) & (f); see *Whittington, supra,* 234 Cal.App.3d at p. 129, fn. 5.) When a party prepares the statement of decision, the court has the responsibility to review, correct, supplement, and edit the statement. (*Miramar Hotel, supra,* 163 Cal.App.3d at p. 1129.)

What must you do to preserve your objections to a proposed statement of decision?

The proposed statement of decision must be in writing, unless the parties agree otherwise or the trial was completed within one day. (See Code Civ. Proc., § 632.) After the proposed statement of decision is rendered, any party may file objections if, for example, it fails to address the particular issues specified in the request or is ambiguous. (Cal. Rules of Court, rule 3.1590(g).)

Objections must be specific and contain "sufficient particularity to allow the trial court to correct the defect." (*Ermoian, supra,* 152 Cal.App.4th at p. 498; *Bay World, supra,* 101 Cal.App.4th at p. 140; *Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1380 (*Golden Eagle*) [objection must allow "the court to focus on the facts or issues the party contends were not resolved or whose resolution is ambiguous"].) Failure to object constitutes a forfeiture and will allow the appellate court to imply findings in favor of the judgment. (*Arceneaux, supra,* 51 Cal.3d at pp. 1133-1134; *Fladeboe, supra*, 150 Cal.App.4th at pp. 59-60.) A losing party's proposed alternative statement of decision, served before the court's issuance of its own statement, does not constitute a timely objection. (*Golden Eagle,* at p. 1380.) A party, however, is not required to object to legal errors appearing on the face of the statement of decision, as such legal errors are not forfeited. (*United Services Auto. Assn. v. Dalrymple* (1991) 232 Cal.App.3d 182, 186.)

A statement of decision becomes final when the judgment is entered. (*Bay World, supra,* 101 Cal.App.4th at p. 141.) Thus, if the court amends the findings before entry of judgment, a party should again object to the statement of decision to preserve the objections on appeal. (*Ibid.*) Alternatively, after entry of judgment, ambiguities or omissions in the statement of decision may be challenged by a

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motion to set aside the judgment (Code Civ. Proc., § 663) or a motion for new trial (Code Civ. Proc., § 657).

Conclusion

The statement of decision process can be daunting and cumbersome. But going through it step by step is worthwhile. By engaging in the process, the party on the losing end of a bench trial can force the trial court to explain its decision in a meaningful way and compel effective appellate review. Through this mechanism, a losing party stands a chance of spinning appellate gold from the dross of an adverse trial court ruling. Otherwise, absent a statement of decision, an appeal from the judgment will not be just an uphill battle, but likely one better not pursued. Obtaining a statement of decision is well worth the time, expense, and effort, and a necessary step should you be inclined to head to the appellate court.

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