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# Beware of Implied Findings

A trial attorney litigating a civil case has to make many strategic decisions that can directly affect an appeal. In a state court nonjury trial, the decision of whether or not to request a statement of decision is one of those decisions. This article discusses the statement of decision procedure and a significant ramification on appeal for failing to request a statement of decision – the doctrine of implied findings.

## What is a statement of decision?

In a nonjury trial, a statement of decision explains the factual and legal basis for the court's decision as to each of the principal controverted issues at trial. The trial court is required to render a statement of decision upon the timely request of any party. Unless the parties to the litigation agree otherwise or the trial is concluded in less than one day, the statement of decision must be in writing.

## When is a statement of decision necessary?

Civil Procedure Code section 632 provides that a statement of decision is required on the trial of a question of fact by the court, i.e. where the court and not a jury is the fact-finder. A statement of decision is not required when the only issue decided by the trial court is a legal issue. However, a statement of decision may be necessary in circumstances that are not typical court trials, such as a trial court writ proceeding in which factual issues are determined. In contrast, a statement of decision is not required when the trial court rules on a motion.

## What is the process for issuing a statement of decision?

California Rule of Court, Rule 3.1590 sets forth the procedure for issuing a statement of decision (except in trials completed in one day). The rule provides that on the trial of a question of fact by the court, the court must announce its tentative decision either orally or in writing. In its tentative decision, the court may (1) state whether a statement of decision, if requested, will be prepared by the court or by one of the parties, and (2) direct that the tentative decision will be the statement of decision unless within 10 days either party specifies controverted issues or makes proposals not covered in the tentative decision.

## How is a statement of decision requested?

Civil Procedure Code section 632 provides that any party appearing at trial may request a statement of decision. Section 632 requires that the "request for a statement of decision shall specify those controverted issues as to which the party is requesting a statement of decision." Once one party has requested a statement of decision, any party can make proposals about the content of the statement of decision. Rule 3.1590(d)

requires that any proposals to the content of the statement of decision must be made within 10 days of the date of the original request for a statement of decision.

Where the trial lasts more than one day, the request must be made within 10 days after the court announces a tentative decision. If the trial is concluded in one day or in less than eight hours, the request for a statement of decision must be made prior to the submission of the matter for decision. Thus, in short nonjury trials, counsel should consider filing a request for a statement of decision prior to the commencement of trial. This avoids the risk of counsel forgetting to ask for a statement of decision during the heat of battle.

**What happens once a statement of decision is requested?**

A proposed statement of decision is prepared either by the court or by one of the parties. In its tentative decision, the court may designate that a party will prepare the statement of decision or within 5 days after the request for a statement of decision the court may notify a party to prepare a proposed statement of decision.

After the proposed statement of decision has been prepared and served, any party affected by the judgment may object to the proposed statement of decision. The objections must be served and filed within 15 days after the proposed statement of decision has been served.

In objecting to a proposed statement of decision, counsel must keep in mind Civil Procedure Code section 634. Section 634 provides that when 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 may not be inferred on appeal "that the trial court decided in favor of the prevailing party as to those facts or on that issue." Thus, when reviewing a proposed statement of decision counsel must closely analyze the proposed statement of decision and file specific objections if there are (1) any controverted issues that are not fully addressed in the proposed statement of decision; or (2) any ambiguities regarding any controverted issues. It should be noted that a party does not waive objections to legal errors appearing on the face of the statement of decision by failing to object to such errors.

There is no statute or rule that sets a time by which the trial court must file its final statement of decision. However, once the final decision is filed, Civil Procedure Code section 664 requires that "judgment must be entered by the clerk, in conformity to the decision of the court, immediately upon the filing of such decision."

**What are the consequences on appeal if a statement of decision is waived or inadequate?**

One of the basic principles of appellate law is that a judgment of the trial court is presumed correct. To win an appeal, the appellant must affirmatively demonstrate that there has been an error. In *Denham v. Superior Court*, 2 Cal. 3d 557, 564 (1970), the

California Supreme Court explained that this "is not only a general principle of appellate practice but an ingredient of the constitutional doctrine of reversible error." In cases where the record is silent and the trial court's ruling does not explain the reasons for the ruling, the appellate court presumes that the trial court's decision was based upon any rationale supported by the record. *State Farm Fire & Casualty Co. v. Pietak*, 90 Cal. App. 4th 600, 610 (2001).

The statutes governing statements of decision, Civil Procedure Code sections 632 and 634, set forth the means to avoid application of these inferences in favor of the judgment. Under section 634, if omissions or ambiguities are brought to the trial court's attention, the appellate court will not imply findings in favor of the judgment. In *Marriage of Arceneaux*, 51 Cal. 3d 1130, 1133-1134 (1990), the California Supreme Court held that the "clear implication of [section 634], of course, is that if a party does not bring such deficiencies to the trial court's attention, the party waives the right to claim on appeal that the statement was deficient in these regards, and hence the appellate court will imply findings to support the judgment." The appellate court then reviews the implied factual findings under the substantial evidence standard.

This is called the doctrine of implied findings. In short, the doctrine of implied findings requires the appellate court to infer that the trial court made implied factual findings favorable to the prevailing party on all issues necessary to support the judgment, including omitted or ambiguously resolved issues. When a party waives a statement of decision either by failing to request one or by making an untimely request, the appellate court may apply the doctrine of implied findings. In addition, the failure to object to a proposed statement of decision and point out all of the omissions and ambiguities may cause the appellate court to apply the doctrine of implied findings. In some situations, this can cause a judgment to be affirmed when there would have been a basis for reversal.

**Conclusion**

The doctrine of implied findings may seem like a harsh rule of appellate law. However, Civil Procedure Code sections 632 and 634 set forth a two step process to avoid the consequences of this doctrine. The first step is for the litigant to request a statement of decision in a nonjury trial. The second step is to bring all ambiguities and omissions in the statement of decision to the trial court's attention. The failure to do so may severely hamper an appellant's chance of success on appeal.

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