

JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Appellate Advisory Committee
Hon. Kathryn Doi Todd, Chair
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DATE: September 3, 2008

SUBJECT: Appellate Procedure: Judicial Notice (amend Cal. Rules of Court,
rule 8.252) (Action Required)

Issue Statement

Rule 8.252 of the California Rules of Court addresses motions asking the Court of Appeal to take judicial notice of materials. Currently, this rule does not address what must be included in a motion for judicial notice. Frequently, motions for judicial notice do not contain information that would help the court in ruling on the motion. Often, the court must search the record for this information, which can result in delaying action on such requests.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2009, amend rule 8.252 of the California Rules of Court to require that motions for judicial notice in the Court of Appeal explain why the material to be noticed is relevant to the appeal and state whether judicial notice of the material was sought in the trial court or whether the material relates to proceedings that occurred after the judgment or order being appealed.

The text of the proposed rule amendments is attached at page 3.

Rationale for Recommendation

Amending rule 8.252 to require that motions for judicial notice include this information will ensure that the Court of Appeal receives the information it needs to rule on such motions in a timely manner.

Alternative Actions Considered

The committee did not consider any alternatives to this proposal.

Comments From Interested Parties

These proposed amendments were circulated as part of the spring 2008 comment cycle. Seven individuals or organizations submitted comments on this proposal. Six commentators agreed with the proposal, and one agreed with the proposal if modified. The full text of the comments received and the committee's responses is attached at pages 4–6.

As circulated for public comment, this proposal required motions for judicial notice to state whether the matter to be noticed relates to postjudgment proceedings. The one commentator that agreed with the proposal if modified suggested that the committee clarify the meaning of “postjudgment” in this provision. The committee agreed with this suggestion and modified its proposal to refer to proceedings occurring after the order or judgment that is the subject of the appeal.

Implementation Requirements and Costs

The committee believes that this change will reduce the courts' workload associated with requests for judicial notice. It will require parties making these requests to include additional information in their requests, but the committee believes that the burden of doing so will be minimal.

Attachments

Rule 8.252 of the California Rules of Court is amended, effective January 1, 2009, to read:

1 **Rule 8.252. Judicial notice; findings and evidence on appeal**

2
3 **(a) Judicial notice**

4
5 (1) To obtain judicial notice by a reviewing court under Evidence Code section
6 459, a party must serve and file a separate motion with a proposed order.

7
8 (2) The motion must state:

9
10 (A) Why the matter to be noticed is relevant to the appeal;

11
12 (B) Whether the matter to be noticed was presented to the trial court and, if
13 so, whether judicial notice was taken by that court; and

14
15 (C) Whether the matter to be noticed relates to proceedings occurring after the
16 order or judgment that is the subject of the appeal.

17
18 ~~(2)~~(3) If the matter to be noticed is not in the record, the party must serve and file a
19 copy with the motion or explain why it is not practicable to do so.

20
21
22 **(b)–(c) * * ***
23

SPR08-08**Appellate Procedure: Judicial Notice** (amend Cal. Rules of Court, rule 8.252)

All comments are verbatim unless indicated by an asterisk (*).

	Commentator	Position	Comment	Committee Response
1.	Phil Goar Judicial Attorney Court of Appeal, Second Appellate District	A	This will be very helpful.	No response required.
2.	Hon. Judith D. McConnell Administrative Presiding Justice Court of Appeal Fourth District, Division One	A		No response required.
3.	Orange County Bar Association Cathrine Castaldi, President	A		No response required.
4.	San Diego County Bar Association Appellate Court Committee Edward I. Silverman, Chair	AM	<p>The proposed revision of rule 8.252 is another that seems beyond objection. In the experience of our committee members, judicial notice requests on appeal are often accompanied by thin explanations of why the matter to be noticed has any bearing on the appeal. The appellate courts should not have to expend resources identifying the relevance, or the history, if any, of the issue in the trial court. This burden is fairly placed on the moving party, especially since judicial notice on appeal is exceptional, not commonplace.</p> <p>We have one comment on the proposed language. Revised rule 8.252(a)(2)(C) would require a motion for judicial notice to state “[w]hether the matter to be noticed relates to postjudgment proceedings.” In our view, the word “postjudgment” is potentially ambiguous. Is “judgment” in this context to be understood narrowly and literally, as a judgment terminating the action in the lower court? Or, more</p>	The committee agrees with this suggestion and has modified its proposal to replace the phrase “postjudgment proceedings” with “proceedings occurring after the order or judgment that is the subject of the appeal.”

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	Commentator	Position	Comment	Committee Response
			<p>expansively, is “judgment” intended to be synonymous with “order or judgment on appeal,” even an interlocutory order?</p> <p>There is a difference. Some rulings, such as an order granting or dissolving an injunction, are immediately appealable, but are not “judgments” as usually understood. (See Code Civ. Proc., § 904.1.) If “judgment” as used in revised rule 8.252(a)(2)(C) is meant to refer to the order or judgment on appeal, we suggest that the rule so state. For example, a motion for judicial notice could be required to state “[w]hether the matter to be noticed relates to proceedings occurring after the order or judgment on appeal” or “after the order or judgment that is the subject of the appeal.”</p>	
5.	State Bar of California Committee on Appellate Courts Saul Bercovitch San Francisco	A	Requiring the moving party to state the relevance to the appeal of the materials for which judicial notice is sought would be of substantial assistance to the appellate courts in ruling on motions for judicial notice. Requiring the moving party to state whether these materials were presented to the trial court and whether the materials relate to post-judgment proceedings also provides guidance to the appellate courts in efficiently ruling on such motions.	No response required.
6.	Superior Court of Los Angeles County	A		No response required.
7.	Superior Court of San Diego County Michael M. Roddy Executive Officer	A		No response required.