

SUPREME COURT COPY

In the Supreme Court of the State of California

COPY

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

JOE RODRIGUEZ, JR.,

Defendant and Appellant.

Case No. S187680

Third Appellate District, Case No. C060227
Yuba County Superior Court, Case No. CRF07288
The Honorable James L. Curry, Judge

OPPOSITION TO MOTION FOR JUDICIAL NOTICE

**SUPREME COURT
FILED**

JUN 27 2011

Frederick K. Ohlrich Clerk

Deputy

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TO THE HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Appellant Joe Rodriguez, Jr., Defendant and Appellant in the above referenced case, has moved for this Court to take judicial notice of seven documents—attached as Exhibits A-G to his motion—pursuant to California Rules of Court, Rule 8.252(a) and Evidence Code sections 452 and 459.^{1/} Respondent opposes this motion for the reasons set forth below.

A. Exhibits A-C and F Are Not Authenticated

Appellant asks the Court to take judicial notice of Exhibits A-C which, he states, are “true and correct copies of documents obtained by counsel for appellant for Legislative Intent Services of Woodland, California[.]” and F. (AMJN 1.)^{2/} Exhibit A purports to be an August 18, 1988, letter from California State Assemblywoman Gwen Moore to California State Senator Robert Presley. Exhibit B purports to be an “Author’s Statement to Senate Third Reading, August 31, 1988, Assembly Bill No. 2013[.]” Exhibit C purports to be an “Author’s Statement to Senate Judiciary Committee dated May 10, 1988, Assembly Bill No. 2013[.]” And Exhibit F purports to be a September 27, 1988, “Report on Enrolled Bill” from the Legislative Counsel of California to then Governor George Deukmejian regarding Senate Bill No. 1555. Judicial notice should not be taken of these exhibits because they are not authenticated.

In *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn. 9, this Court denied the plaintiff’s request to take judicial notice of materials supplied to his counsel by the Legislative Intent Services,

¹ These matters were not presented to the trial court and do not relate to proceedings occurring after the order or judgment that is the subject of the appeal. (Cal. Rules of Court, rules 8.252(a)(2)(B) & (C).)

² “AMJN” refers to Appellant’s Motion for Judicial Notice.

presumably the same organization that provided exhibits A-C to appellant's counsel here. In so doing, this Court stated:

Plaintiffs' request that the court take judicial notice of various materials assertedly related to the enactment of Insurance Code sections 12414.26 and 12414.29, supplied to counsel by the Legislative Intent Service is denied. The court will take judicial notice of the legislative history of a statute in order to ascertain the purpose of and meaning of an ambiguous statute. (See, e.g., *People v. Eubanks* (1996) 14 Cal.4th 580, 591.) This includes reports of Senate and Assembly committees. (*People v. Cruz* (1996) 13 Cal.4th 764, 773-774, fn. 5.) None of the materials submitted by plaintiffs are authenticated, however. (Evid.Code, §§ 1401, 1530.) Moreover, some of the documents are not materials shown to have been available to and presumably reviewed by the Legislature when adoption of those statutes was under consideration. While the views of individual legislators as to the meaning of a statute rarely, if ever, are relevant, committee reports and analyses or digests of the Legislative Counsel are because it is reasonable to infer that all members of the Legislature considered them when voting on the proposed statute. (13 Cal.4th at pp. 773-774, fn. 5.)

(*Ibid.*, parallel citations omitted.)

Similarly, Exhibits A-C and F are not authenticated. Further, Exhibits A-C purportedly reflect, at most, the views of an individual legislator which "rarely, if ever, are relevant[.]" (*Quelimane Co. v. Stewart Title Guaranty Co.*, *supra*, 19 Cal.4th at p. 46, fn. 9.)

B. Exhibits D, E, and G Are Published Materials

Appellant asks this Court to take judicial notice of exhibits D, E, and G, all of which are published material. Exhibit D is the "Legislative Counsel's Digest [and text of], Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242[.]"^{3/} Exhibit E is the

³ The Legislative Counsel's Digest of Assembly Bill No. 2013 appears at 4 Stats. 1988 (1987-1988 Reg. Sess.) Summary Dig., pages 414-415.

“Legislative Counsel’s Digest [and text of], Senate Bill No. 1555 (1987-1988 Regular Session) Statutes 1988, Chapter 1256[.]”^{4/} Exhibit G is “Penal Code section 186.22, subdivision (a) [and the Legislative Counsel’s Digest] as enacted by Assembly Bill No. 2013 (1987-1988 Regular Session) Statutes 1988, Chapter 1242.”^{5/ 6/} As this Court has stated, “A request for judicial notice of published material is unnecessary. Citation to the material is sufficient. (See *Stop Youth Addiction v. Lucky Stores, Inc.*, [(1988)] 17 Cal.4th 553, 571, fn. 9.) We therefore consider the request for judicial notice as a citation to those materials that are published.” (*Quelimane Co. v. Stewart Title Guaranty Co.*, *supra*, 19 Cal.4th at p. 46, fn. 9, parallel citations omitted; *Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 440, fn. 18.)

⁴ The Legislative Counsel’s Digest of Senate Bill No. 1555 appears at 4 Stats. 1988 (1987-1988 Reg. Sess.) Summary Dig., pages 421-422.

⁵ The text of Assembly Bill No. 2013 as chaptered appears at 3 Stats. 1988, ch. 1242, section 1, pages 4127-4130.

⁶ Exhibits D and G appear to be identical.

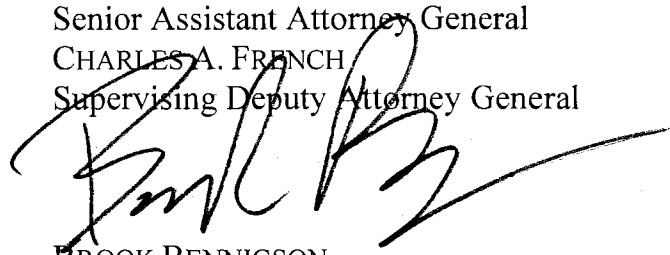
C. Conclusion

Based on the foregoing, respondent respectfully requests that appellant's motion for judicial notice of exhibits A, B, C, and F be denied because those exhibits are not authenticated and requests that appellant's motion for judicial notice of exhibits D, E, and G be denied because those exhibits are published materials.^{7/}

Dated: June 23, 2011

Respectfully submitted,

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⁷ Respondent respectfully suggests that, in accordance with *Quelimane Co. v. Stewart Title Guaranty Co.*, *supra*, 19 Cal.4th at p. 46, fn. 9, the request for judicial notice as to exhibits D, G, and E, be considered a citation to those materials.

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **People v. Rodriguez**

No.: **S187680**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On June 23, 2011, I served the attached **OPPOSITION TO MOTION FOR JUDICIAL NOTICE** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 1300 I Street, Suite 125, P.O. Box 944255, Sacramento, CA 94244-2550, addressed as follows:

Diane Nichols
Attorney at Law
P.O. Box 2194
Grass Valley, CA 95945-2194
(Attorney for Appellant)
(2 copies)

Court of Appeal,
Third Appellate District
621 Capitol Mall, 10th Floor
Sacramento, CA 95814-4719

Honorable Patrick J. McGrath
Yuba County District Attorney
Courthouse
215 Fifth Street
Marysville, CA 95901

Clerk of the Superior Court
Yuba County Courthouse
215 Fifth Street, Suite 200
Marysville, CA 95901

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on June 23, 2011, at Sacramento, California.

Declarant