

Judicial Council of California • Administrative Office of the Courts

455 Golden Gate Avenue · San Francisco, California 94102-3688
www.courts.ca.gov/policyadmin-invitationstocomment.htm

INVITATION TO COMMENT

SPR11-09

Title	Action Requested
Appellate Procedure: Judicial Notice	Review and submit comments by Monday, June 20, 2011
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rules 8.252 and 8.809	January 1, 2012
Proposed by	Contact
Appellate Advisory Committee	Heather Anderson, 415-865-7691
Hon. Kathryn Doi Todd, Chair	heather.anderson@jud.ca.gov

Discussion

Evidence Code section 459 establishes when a reviewing court must or may take judicial notice of a matter. This statute provides that a reviewing court must take judicial notice of a matter that was properly judicially noticed by the trial court and any matter that the trial court was required to judicially notice under sections 451 or 453. In addition, section 459 provides that a reviewing court may take judicial notice of any matter specified in section 452.

Rules 8.252 and 8.809 establish the procedures for requesting judicial notice in the Supreme Court or Court of Appeal and in the superior court appellate division, respectively. In addition to the general requirement established by rule 8.54 that motions state the grounds for the relief requested, these rules list specific items that must be addressed in a motion requesting that the court take judicial notice, including the relevancy of the matter to be judicially noticed and whether judicial notice of this matter was granted in the trial court. Under Evidence Code section 459, to appropriately consider a motion for judicial notice of a matter that was not judicially noticed in the trial court, the reviewing court will also need to know the statutory basis under which judicial notice is being sought. To ensure that this information is included in such motions, this proposal would amend rules 8.252 and 8.809 to specifically require that if judicial notice of the matter was not taken by the trial court, the motion state why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

The proposals have not been approved by the Judicial Council and are not intended to represent the views of the council, its Rules and Projects Committee, or its Policy Coordination and Liaison Committee. These proposals are circulated for comment purposes only.

1 **Division 2. Rules Relating to the Superior Court Appellate Division**

2
3 **Chapter 1. General Rules Applicable to Appellate Division Proceedings**

4
5 **Rule 8.809. Judicial notice**

6
7 **(a) Motion required**

8
9 (1) To obtain judicial notice by a reviewing court under Evidence Code section
10 459, a party must serve and file a separate motion with a proposed order.

11
12 (2) The motion must state:

13
14 (A) Why the matter to be noticed is relevant to the appeal;

15
16 (B) Whether the matter to be noticed was presented to the trial court and, if
17 so, whether judicial notice was taken by that court; ~~and~~

18
19 (C) If judicial notice of the matter was not taken by the trial court, why the
20 matter is subject to judicial notice under Evidence Code section 451,
21 452, or 453; and

22
23 ~~(D)~~(D) Whether the matter to be noticed relates to proceedings occurring
24 after the order or judgment that is the subject of the appeal.

25
26 **(b) * * ***

Item SPR11-09 Response Form

Title: **Appellate Procedure: Judicial Notice** (amend Cal. Rules of Court, rules 8.252 and 8.809)

- Agree** with proposed changes
- Agree** with proposed changes **if modified**
- Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

- Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

To Submit Comments

Comments may be submitted online, written on this form, or prepared in a letter format. If you are *not* commenting directly on this form, please include the information requested above and the proposal number for identification purposes. Please submit your comments online or email, mail, or fax comments. You are welcome to email your comments as an attachment.

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DEADLINE FOR COMMENT: 5:00 p.m., Monday, June 20, 2011

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.