



Judicial Council of California · Administrative Office of the Courts

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REPORT TO THE JUDICIAL COUNCIL

For business meeting on: February 28, 2012

Title	Agenda Item Type
Appellate Procedure: Judicial Notice	Action Required
Rules, Forms, Standards, or Statutes Affected	Effective Date
Amend Cal. Rules of Court, rules 8.252 and 8.809	January 1, 2013
Recommended by	Date of Report
Appellate Advisory Committee	August 1, 2011
Hon. Kathryn Doi Todd, Chair	Contact
	Heather Anderson, 415-865-7691
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Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to taking judicial notice in appellate courts 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 the Evidence Code. These amendments will ensure courts have the information they need to make an appropriate determination regarding taking judicial notice.

Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2013, amend rules 8.252 and 8.809 to specifically require that if judicial notice of a 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 text of the amended rules is attached at pages 4–5.

Previous Council Action

The predecessor to rule 8.252(a), rule 14.5, regarding taking judicial notice in Court of Appeal proceedings, was adopted by the Judicial Council effective July 1, 2000. This rule was subsequently renumbered several times and, effective January 1, 2007, became 8.252(a). Rule 8.809, which was modeled on rule 8.252(a), was adopted by the Judicial Council effective January 1, 2011.

Rationale for Recommendation

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.¹ 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 report recommends amending rules 8.252 and 8.809 to specifically require that if judicial notice of a 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.

Comments, Alternatives Considered, and Policy Implications

Comments

This proposal was circulated between April 21 and June 20, 2011, as part of the regular spring 2011 comment cycle. Eleven individuals or organizations submitted comments on this proposal. Ten commentators agreed with the proposal and one did not indicate a position on the proposal. The full text of the comments received and the committee responses are set out in the attached comment chart at pages 6–7. Based on these comments, the committee is recommending that the rule amendments be adopted as circulated for public comment.

¹ Rule 8.252(a) addresses taking judicial notice in Court of Appeal proceedings. Rule 8.520(g) provides, however, that to “obtain judicial notice by the Supreme Court under Evidence Code section 459, a party must comply with rule 8.252(a).”

Alternatives Considered

The committee considered not recommending any changes to these rules. The committee concluded, however, that the proposed amendments would provide helpful guidance to litigants and potentially reduce costs for the courts and therefore that it is preferable to amend the rules.

Implementation Requirements, Costs, and Operational Impacts

The proposal should not result in appreciable implementation requirements, costs, or operational impacts. By ensuring that courts have the information they need to make an appropriate determination regarding taking judicial notice, these amendments may save time, and thus reduce costs, for the courts.

Attachments

1. Cal. Rules of Court, rules 8.252 and 8.809, at pages 4–5
2. Comment chart, at page 6–7

Rules 8.252 and 8.809 of the California Rules of Court are amended, effective January 1, 2013, to read:

Title 8. Appellate Rules

Division 1. Rules Relating to the Supreme Court and Courts of Appeal

Chapter 2. Civil Appeals

Article 4. Hearing and Decision in the Court of Appeal

Rule 8.252. Judicial notice; findings and evidence on appeal

(a) Judicial notice

- (1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.
- (2) The motion must state:
 - (A) Why the matter to be noticed is relevant to the appeal;
 - (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court; ~~and~~
 - (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
 - ~~(D)~~ Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.
- (3) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

(b)-(c) * * *

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 459, a
10 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 so,
17 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 matter
20 is subject to judicial notice under Evidence Code section 451, 452, or 453; and

21
22 ~~(D)~~(D) Whether the matter to be noticed relates to proceedings occurring after the
23 order or judgment that is the subject of the appeal.

24
25 **(b) * * ***

SPR11-09**Appellate Procedure: Judicial Notice** (amend Cal. Rules of Court, rules 8.252 and 8.809)

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

	Commentator	Position	Comment	Committee Response
1.	Appellate Court Committee San Diego County Bar Association By Cecilia O. Miller, Chair	A	Our committee supports the revisions to rules 8.252 and 8.809 without comment.	No response required.
2.	Appellate Defenders, Inc., California Appellate Project - San Francisco, and the First District Appellate Project By Mat Zwerling, Executive Director	A	We agree with the proposed changes to rule 8.252(a)(2), adding “(C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453...” Since the proposed rule change parallels the statutory requirement for judicial notice, it is eminently reasonable. Appellate attorneys should be including this information in any event.	No response required.
3.	Committee on Appellate Courts State Bar of California Benjamin Shatz, Chair	A	The committee supports this proposal.	No response required.
4.	County Counsel, County of Los Angeles James M. Owens, Assistant County Counsel	A	Amendments to Rules 8.252(a) and 8.809 would add language that "If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453 ; and" The Evidence Code lays out what may be judicially noticed so adding the proposed language to the rule would likely not impede the process or the work involved with these motions.	No response required.
5.	Judith McConnell, Presiding Justice Court of Appeal, Fourth Appellate District, Division One	A	I agree with the proposed revisions to rules 8.252 and 8.809 to require that a party seeking judicial notice of matter not judicially noticed by the superior court state in its motion	No response required.

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	Commentator	Position	Comment	Committee Response
			why the matter is the proper subject for judicial notice under the Evidence Code.	
6.	Orange County Bar Association By John Hueston, President	A	No specific comment.	No response required.
7.	Orange County Public Defender's Office By Deborah Kwast – Public Defender	A	No specific comment.	No response required.
8.	Rules and Legislation Committee of the State Bar of California's Litigation Section By Reuben A. Ginsburg - Co-chair	A	The Rules and Legislation Committee agrees with the proposal.	No response required.
9.	Superior Court of Monterey County By Karissa Adame – Research Attorney	A	No specific comment.	No response required.
10.	Superior Court of Sacramento County By Robert Turner – ASO II Research & Evaluation Division	NI	No specific comment.	No response required.
11.	Superior Court of San Diego County By Michael M. Roddy Executive Officer	A	No specific comment.	No response required.