



## JUDICIAL COUNCIL OF CALIFORNIA

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# REPORT TO THE JUDICIAL COUNCIL

For business meeting on October 28, 2014

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Title

Appellate Procedure: Judicial Notice  
Requests

Agenda Item Type

Action Required

Effective Date

January 1, 2015

Rules, Forms, Standards, or Statutes Affected  
Amend Cal. Rules of Court, rules 8.252 and  
8.809

Date of Report

September 18, 2014

Recommended by

Appellate Advisory Committee  
Justice Raymond J. Ikola, Chair

Contact

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### Executive Summary

The Appellate Advisory Committee recommends amending the rules relating to motions for judicial notice to require that the pages of documents submitted with the motion be consecutively paginated. This change will facilitate more accurate citation by parties and make it easier for the court to locate cited material.

### Recommendation

The Appellate Advisory Committee recommends that the Judicial Council, effective January 1, 2015, amend California Rules of Court, rules 8.252 and 8.809, to require that the pages of documents submitted with a motion for judicial notice be consecutively paginated.

The text of the amended rules is attached at page 4.

## **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 rule 8.252(a). Rule 8.809, which was modeled on rule 8.252(a), was adopted by the Judicial Council effective January 1, 2011. The Judicial Council amended both rule 8.252(a) and rule 8.809, effective January 1, 2013, to specifically require that if judicial notice of a matter was not taken by the trial court, the motion must state why the matter is subject to judicial notice under the Evidence Code.

## **Rationale for Recommendation**

Rule 8.252 addresses motions for judicial notice in the Court of Appeal and the Supreme Court.<sup>1</sup> Rule 8.809 similarly addresses motions for judicial notice in the superior court appellate division. Rules 8.825(a)(3) and 8.809(b) require that, if the matter to be noticed is not in the record, the party must serve and file a copy with the motion. These rules currently contain no requirements with respect to the format of a document or documents submitted with a motion for judicial notice. In contrast, rules 8.155(a)(1) and 8.841(a), which address motions for augmentation of the record in the Court of Appeal and the superior court appellate division, respectively, require that the pages of documents attached to such a motion be consecutively numbered.

The committee recommends that rules 8.252 and 8.809 be amended to require that, similar to attachments to motions to augment, the pages of copies of material submitted with a motion for judicial notice be consecutively paginated. This pagination will make it easier for parties to accurately cite to this material and for the court to locate cited material in these copies.

## **Comments, Alternatives Considered, and Policy Implications**

### **Comments**

A proposal to amend rule 8.252 was circulated from April 18 to June 18, 2014, in the regular spring 2014 comment cycle. Seven organizations submitted comments on this proposal. Six commentators agreed with the proposal, and one did not indicate a position. One of the commentators that agreed with the proposal also suggested that the parallel rule on motions for judicial notice in the superior court appellate division—rule 8.809—be similarly amended. A chart with the full text of the comments received and the committees' responses is attached at page 5.

Based on these comments, the committee recommends adopting the amendment to rule 8.252 as it was circulated and adopting the same amendment to rule 8.809.

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<sup>1</sup> Rule 8.520(g) provides that, to obtain judicial notice by the Supreme Court, a party must comply with rule 8.252(a), and rules 8.366 and 8.470 provide that rule 8.252, which is part of the rules on civil appeals, also generally applies in criminal and juvenile proceedings, respectively, in the Court of Appeal.

**Alternatives**

In addition to the alternative considered in response to the public comments, the committee also considered requiring that additional formatting requirements, such as binding and indexing, be applied to material submitted with both motions for judicial notice and motions to augment the record. The committee concluded, however, that given the small number of documents typically submitted with such motions, these additional formatting requirements would generally not be necessary.

In addition, the committee considered not proposing these rule amendments at all. However, the committee concluded that a pagination requirement should be proposed because it would facilitate more accurate citation by parties and make it easier for the court to locate cited material.

**Implementation Requirements, Costs, and Operational Impacts**

This proposal should impose no implementation requirements or costs on the courts.

**Attachments and Links**

1. Cal. Rules of Court, rules 8.252 and 8.809, at page 4
2. Chart of comments, at page 5

Rules 8.252 and 8.809 of the California Rules of Court are amended, effective January 1, 2015, 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)–(2) \* \* \*

(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. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.

**(b)–(c) \* \* \***

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

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

**Rule 8.809. Judicial notice**

**(a) \* \* \***

**(b) Copy of matter to be judicially noticed**

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. The pages of the copy of the matter or matters to be judicially noticed must be consecutively numbered, beginning with the number 1.

**SPR14-03**

Appellate Procedure: Judicial Notice Requests

Amend Cal. Rules of Court, rule 8.252

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

	<b>Commentator</b>	<b>Position</b>	<b>Comment</b>	<b>Committee Response</b>
1.	Committee on Appellate Courts State Bar of California Saul Bercovitch	A	The Committee on Appellate Courts supports this proposal.	The committee notes the commentator's support for the proposal; no response required.
2.	Court of Appeal, Second Appellate District Thomas Kallay Managing Attorney	A	1. We agree with this proposal.  2. We agree that there will be no court implementation costs or requirements.	The committee notes the commentator's support for the proposal; no response required.
3.	Los Angeles County Counsel Dawyn Harrison Assistant County Counsel	A	No additional comments	The committee notes the commentator's support for the proposal; no response required.
4.	Orange County Bar Association	A	No additional comments	The committee notes the commentator's support for the proposal; no response required.
5.	Superior Court of Los Angeles County	A	No additional comments	The committee notes the commentator's support for the proposal; no response required.
6.	Superior Court of Riverside County	NI	No specific comment	No response required.
7.	Superior Court of San Diego County Michael Roddy Executive Officer	A	Our court notes that if Rule 8.252 (a)(3) is amended to require the numbering of the pages in requests for judicial notice of materials not contained in the record as proposed, Rule 8.809(b) (which governs requests for judicial notice in the Appellate Division and currently mirrors the language in 8.252(a)(3)) should be similarly amended for consistency.	The committee notes the commentator's support for the proposal. Based on this comment, the committee revised its proposal to include a similar amendment to rule 8.809(b).

