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How Different Judicial Notice Rules Can Change an Outcome

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Judicial notice is one of the less glamorous parts of motion practice. A request for judicial notice is typically a lower-priority background document, drafted towards the end of the brief-writing process, along with a notice of motion and declaration. But at times, questions relating to judicial notice standards warrant additional consideration, along with the merits of the case.

When preparing a brief, attorneys often spend a lot of time on deciding exactly how to frame a relevant standard or rule so that the moving party can meet that standard but the opposing party cannot. Some consideration may even be given to these issues before the case is filed; a potential plaintiff often researches relevant state and federal law to determine which jurisdiction is friendlier to their forthcoming claims.

This type of attention is usually not given to judicial notice, but the difference between state and federal law can be similarly determinative. For example, the Advisory Committee Notes to Federal Rule of Evidence 201, which provides for judicial notice of adjudicative facts, explicitly state that the rule only applies to "the facts of the particular case." It does not apply to "legislative facts," which are matters that "have relevance to the legal reasoning and the lawmaking process." They are facts that go into making policy decisions, as opposed to those facts that are relevant just to the specific case. By contrast, the provisions of the California Evidence Code that govern judicial notice (sections 450 through 460) contain no such restriction.

This is an important difference; judicially noticed facts are a "long-established substitute for normal proof by evidence." 60 Am. Jur. Proof of Facts 3d 175, § 1 (Originally published in 2001). When a fact is judicially noticed, it is "not seriously open to dispute." *Id.* A court that has judicially noticed a fact has accepted it as true; thus, the type of fact that is eligible to be noticed can play a significant role in what the court considers when making its decision. That, in turn, can affect the ultimate decision made by a court.

In *CTC Global Corp. v. Huang*, District Judge Andrew J. Guilford described the state of federal judicial notice law in clear terms: "judicial notice under Federal Rule of Evidence 201 is for cold, hard, undisputable facts—not law." 2018 WL 4849715, at *3 (C.D. Cal. Mar. 19, 2018). Similarly, in *Horn v. Azusa Pacific Univ.*, District Judge Christina Snyder refused to take judicial notice of certain aspects of a bill's legislative history because they were legislative rather than adjudicative facts. 2019 WL 9044606, at *1 n.1. (C.D. Cal. Jan. 14, 2019).

As noted above, California law does not contain such a restriction. California judges, therefore, can judicially notice legislative facts when making their decisions. When that happens, those legislative facts are "not seriously open to dispute." This outcome is not possible under federal law.

This difference between federal law and California law is subtle but significant. What a judge considers to be an incontrovertible fact can be an important determinant; if certain legislative facts cannot be disputed in state court but can be in federal court, different judges may reach different outcomes. Therefore, potential plaintiffs whose claims will rely on legislative facts may wish to consider whether a federal or state forum is more appropriate.

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