

ARTICLE II. JUDICIAL NOTICE

Rule
201. Judicial Notice of Adjudicative Facts.

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- (a) *Scope of Rule.* This rule governs only judicial notice of adjudicative facts.
- (b) *Kinds of Facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.
- (c) *When Discretionary.* A court may take judicial notice, whether requested or not.
- (d) *When Mandatory.* A court shall take judicial notice if requested by a party and supplied with the necessary information.
- (e) *Opportunity to Be Heard.* A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.
- (f) *Time of Taking Notice.* Judicial notice may be taken at any stage of the proceeding.
- (g) *Instructing Jury.* The court shall instruct the jury that it may, but is not required to, accept as conclusive, any fact judicially noticed.

Comment

This rule is identical to F.R.E. 201, except for paragraph (g).

Paragraph (a) limits the application of this rule to adjudicative facts. This rule is not applicable to judicial notice of law. Adjudicative facts are facts about the events, persons and places relevant to the matter before the court. See 2 McCormick, *Evidence* § 328 (4th ed. 1992).

In determining the law applicable to a matter, the judge is sometimes said to take judicial notice of law. See 21 Wright and Graham, *Federal Practice and Procedure*, § 5102 (1977). In Pennsylvania, judicial notice of law has been regulated by decisional law and statute. See *In re Annual Controller's Reports for Years 1932, 1933, 1934, 1935 and 1936*, 333 Pa. 489, 5 A.2d 201 (1939) (judicial notice of public laws); 42 Pa.C.S.A. § 6107 (judicial notice of municipal ordinances); 42 Pa.C.S.A. § 5327 (judicial notice of laws of any jurisdiction outside the Commonwealth); 45 Pa.C.S.A. § 506 (judicial notice of the contents of the Pennsylvania Code and the Pennsylvania Bulletin). These rules are not intended to change existing provisions of law.

Paragraph (b) is consistent with Pennsylvania law. See *Appeal of Albert*, 372 Pa. 13, 92 A.2d 663 (1952); *In re Siemens' Estate*, 346 Pa. 610, 31 A.2d 280 (1943).

Paragraph (c) is consistent with Pennsylvania practice.

Paragraph (d) is new to Pennsylvania. Heretofore, the taking of judicial notice has been discretionary, not mandatory. The approach of the Federal Rule has been adopted because it has not been problematic in the jurisdictions that have adopted it.

Paragraph (e) provides that parties will have an opportunity to be heard on the propriety of the court's taking judicial notice. No formal procedure has been provided. Pennsylvania practice appears to have operated satisfactorily without a formal procedure.

Paragraph (f) resolves an apparent inconsistency in Pennsylvania law. Pennsylvania law has not been completely consistent with regard to whether a court may take judicial notice at the pleading stage of proceedings. See *Clouser v. Shamokin Packing Co.*, 240 Pa. Super. 268, 361 A.2d 836 (1976) (trial court generally should not take judicial notice at the pleading stage); *Bykowski v. Chesed Co.*, 425 Pa. Super. 595, 625 A.2d 1256 (1993) (trial court may take judicial notice in ruling on motion for judgment on the pleadings). Similarly, older authority has held that judicial notice may not be taken at the appellate stage. See *Wilson v. Pennsylvania R.R. Co.*, 421 Pa. 419, 219 A.2d 666 (1966). More recently, the Supreme Court has taken judicial notice at the appellate stage. See *Commonwealth v. Tau Kappa Epsilon*, 530 Pa. 416, 609 A.2d 791 (1992). Pa.R.E. 201(f) permits judicial notice to be taken at any stage.

Paragraph (g) differs from F.R.E. 201(g). Under the Federal Rule the court is required to instruct the jury to accept as conclusive any fact judicially noticed in a civil case. In a criminal case, the judicially noticed fact is not treated as conclusive. Under Pennsylvania law, the judicially noticed fact has not been treated as conclusive in either civil or criminal cases, and the opposing party may submit evidence to the jury to disprove the noticed fact. See *Appeal of Albert*, 372 Pa. 13, 92 A.2d 663 (1952); *Commonwealth v. Brown*, 428 Pa. Super. 587, 631 A.2d 1014 (1993). This paragraph follows established Pennsylvania law.

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