Rule 201. Judicial Notice of Adjudicative Facts

(a) Scope of rule. This rule governs only judicial notice of adjudicative facts in civil cases.

(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 to accept as conclusive any fact judicially noticed.

(Amended effective January 1, 1990.)

Committee Comment - 1989

Rule 201(a)

The rule governing judicial notice is applicable only to civil cases. The status of the law governing the use of judicial notice in criminal cases is unsettled and not appropriate for codification. While it is understood that a trial judge should not direct a verdict against an accused in a criminal case, it is less clear the extent to which the court can take judicial notice of uncontested and uncontradictable peripheral facts or facts establishing venue. See e.g. State v. White, 300 N.W.2d 176 (Minn. 1980); State v. Trezona, 286 Minn. 531, 176 N.W.2d 95 (1970). Trial courts should rely on applicable case law to determine the appropriate use of judicial notice in criminal cases.

This rule is limited to judicial notice of "adjudicative" facts, and does not govern judicial notice of "legislative" facts. The distinction between adjudicative and legislative facts was developed by Professor Kenneth C. Davis. An Approach to Problems of Evidence in the Administrative Process, 55 Harv.L.Rev. 364, 404-407 (1942); Judicial Notice, 55 Colum.L.Rev. 945 (1955); Administrative Law Text, Ch. 15 (3d ed. 1972).

Adjudicative facts generally are the type of facts decided by juries. Facts about the parties, their activities, properties, motives, and intent, the facts that give rise to the controversy, are adjudicative facts.

Legislative facts involve questions of law and policy and normally are decided by the court. See Beaudette v. Frana, 285 Minn. 366, 372, 173 N.W.2d 416, 419, 420 (1969) where the Court notices the effect which various courses of conduct might have upon the integrity of the marriage relationship. See also McCormack v. Hankscraft Co., 278 Minn. 322, 338, 154 N.W.2d 488, 500 (1967) "(e)nlarging a manufacturer's liability to those injured by its products more adequately meets public policy demands to protect consumers from the inevitable risks of bodily harm created by mass production and complex marketing conditions." The Committee was in agreement with the

promulgators of the federal rule of evidence in not limiting judicial notice of legislative facts. See United States Supreme Court Advisory Committee Note.

Rule 201(b)

Minnesota has traditionally limited judicial notice of adjudicative facts to situations incapable of serious dispute. See State ex rel. Remick v. Clousing, 205 Minn. 296, 301, 285 N.W. 711, 714, 123 A.L.R. 465 (1939). This includes matters capable of accurate and ready determination. See Bollenbach v. Bollenbach, 285 Minn. 418, 429, 175 N.W.2d 148, 156 (1970), as well as facts of common knowledge; In re Application of Baldwin, 218 Minn. 11, 16, 17, 15 N.W.2d 184, 187 (1944).

Rule 201(c), (d)

These issues have received little attention in Minnesota. See generally State, Department of Highways v. Halvorson, 288 Minn. 424, 429, 181 N.W.2d 473, 476 (1970). The net effect of the rule should be to encourage the taking of judicial notice in appropriate circumstances. The improper refusal to take judicial notice would not necessarily be reversible. See Rule 103.

Rule 201(e)

The opportunity to be heard is a mainstay of procedural fairness. This right is protected by the rule. If the limits imposed upon the judicial notice by subdivision (b) of this rule are properly observed, there should be relatively little controversy concerning the right to be heard. The shape of the hearing on the issue of judicial notice rests in the discretion of the trial judge. However, in a jury trial such a hearing should always be outside of the presence of the jury. Rule 103(c). See also Rule 104(c).

Rule 201(f)

This subdivision recognizes that the circumstances which make judicial notice of adjudicative facts appropriate are not limited to any particular stage of the judicial process.

Rule 201(g)

The conclusive nature of judicially noticed facts in civil cases is consistent with the restrictions which the rule places upon the kinds of facts which can be judicially noticed.

The rule does not affect judicial notice of foreign law. See Minn. R. Civ. P. 44.04. There are a number of existing statutes that deal with judicial notice of local laws, regulations, etc. See e.g., Minnesota Statutes 1974, chapter 599, and sections 268.12, clause (3), 410.11; Minnesota Statutes 1975 Supplement, section 15.049.