

# STATE OF NEW YORK

9061

## IN SENATE

June 15, 2018

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the civil practice law and rules, in relation to judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping service

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Rule 4511 of the civil practice law and rules, as renum-  
2 bered by chapter 315 of the laws of 1962, is amended to read as follows:  
3 Rule 4511. Judicial notice of law. (a) When judicial notice shall be  
4 taken without request. Every court shall take judicial notice without  
5 request of the common law, constitutions and public statutes of the  
6 United States and of every state, territory and jurisdiction of the  
7 United States and of the official compilation of codes, rules and regu-  
8 lations of the state except those that relate solely to the organization  
9 or internal management of an agency of the state and of all local laws  
10 and county acts.

11 (b) When judicial notice may be taken without request; when it shall  
12 be taken on request. Every court may take judicial notice without  
13 request of private acts and resolutions of the congress of the United  
14 States and of the legislature of the state; ordinances and regulations  
15 of officers, agencies or governmental subdivisions of the state or of  
16 the United States; and the laws of foreign countries or their political  
17 subdivisions. Judicial notice shall be taken of matters specified in  
18 this subdivision if a party requests it, furnishes the court sufficient  
19 information to enable it to comply with the request, and has given each  
20 adverse party notice of his intention to request it. Notice shall be  
21 given in the pleadings or prior to the presentation of any evidence at  
22 the trial, but a court may require or permit other notice.

23 (c) When judicial notice shall be taken based on a rebuttable presump-  
24 tion. Every court shall take judicial notice of an image, map, location,  
25 distance, calculation, or other information taken from a web mapping  
26 service, a global satellite imaging site, or an internet mapping tool,  
27 when requested by a party to the action, subject to a rebuttable

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 presumption that such image, map, location, distance, calculation, or  
2 other information fairly and accurately depicts the evidence presented.  
3 The presumption established by this subdivision shall be rebutted by  
4 credible and reliable evidence that the image, map, location, distance,  
5 calculation, or other information taken from a web mapping service, a  
6 global satellite imaging site, or an internet mapping tool does not  
7 fairly and accurately portray that which it is being offered to prove. A  
8 party intending to offer such image or information at a trial or hearing  
9 shall, at least thirty days before the trial or hearing, give notice of  
10 such intent, providing a copy or specifying the internet address at  
11 which such image or information may be inspected. No later than ten days  
12 before the trial or hearing, a party upon whom such notice is served may  
13 object to the request for judicial notice of such image or information,  
14 stating the grounds for the objection. Unless objection is made pursuant  
15 to this subdivision, or is made at trial based upon evidence which could  
16 not have been discovered by the exercise of due diligence prior to the  
17 time for objection otherwise required by this subdivision, the court  
18 shall take judicial notice of such image or information.

19 (d) Determination by court; review as matter of law. Whether a matter  
20 is judicially noticed or proof is taken, every matter specified in this  
21 section shall be determined by the judge or referee, and included in his  
22 or her findings or charged to the jury. Such findings or charge shall be  
23 subject to review on appeal as a finding or charge on a matter of law.

24 [~~(d)~~] (e) Evidence to be received on matter to be judicially noticed.  
25 In considering whether a matter of law should be judicially noticed and  
26 in determining the matter of law to be judicially noticed, the court may  
27 consider any testimony, document, information or argument on the  
28 subject, whether offered by a party or discovered through its own  
29 research. Whether or not judicial notice is taken, a printed copy of a  
30 statute or other written law or a proclamation, edict, decree or ordi-  
31 nance by an executive contained in a book or publication, purporting to  
32 have been published by a government or commonly admitted as evidence of  
33 the existing law in the judicial tribunals of the jurisdiction where it  
34 is in force, is prima facie evidence of such law and the unwritten or  
35 common law of a jurisdiction may be proved by witnesses or printed  
36 reports of cases of the courts of the jurisdiction.

37 § 2. This act shall take effect immediately.