STATE OF NEW YORK

1489

2019-2020 Regular Sessions

IN ASSEMBLY

January 15, 2019

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the admissibility of images, maps, locations, distances, calculations or other information for a web mapping service

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

Section 1. Rule 4511 of the civil practice law and rules, as amended by a chapter of the laws of 2018, amending the civil practice law and rules relating to judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping service, as proposed in legislative bills numbers S. 9061 and A. 11191, is amended to read as follows:

Rule 4511. Judicial notice of law. (a) When judicial notice shall be taken without request. Every court shall take judicial notice without request of the common law, constitutions and public statutes of the United States and of every state, territory and jurisdiction of the United States and of the official compilation of codes, rules and regulations of the state except those that relate solely to the organization or internal management of an agency of the state and of all local laws and county acts.

(b) When judicial notice may be taken without request; when it shall be taken on request. Every court may take judicial notice without request of private acts and resolutions of the congress of the United States and of the legislature of the state; ordinances and regulations of officers, agencies or governmental subdivisions of the state or of the United States; and the laws of foreign countries or their political subdivisions. Judicial notice shall be taken of matters specified in this subdivision if a party requests it, furnishes the court sufficient information to enable it to comply with the request, and has given each adverse party notice of his intention to request it. Notice shall be

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

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given in the pleadings or prior to the presentation of any evidence at the trial, but a court may require or permit other notice.

(c) [~~When judicial notice shall be taken based on a rebuttable presumption. Every court shall take judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool, when requested by a party to the action, subject to a rebuttable presumption that such image, map, location, distance, calculation, or other information fairly and accurately depicts the evidence presented. The presumption established by this subdivision shall be rebutted by credible and reliable evidence that the image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool does not fairly and accurately portray that which it is being offered to prove. A party intending to offer such image or information at a trial or hearing shall, at least thirty days before the trial or hearing, give notice of such intent, providing a copy or specifying the internet address at which such image or information may be inspected. No later than ten days before the trial or hearing, a party upon whom such notice is served may object to the request for judicial notice of such image or information, stating the grounds for the objection. Unless objection is made pursuant to this subdivision, or is made at trial based upon evidence which could not have been discovered by the exercise of due diligence prior to the time for objection otherwise required by this subdivision, the court shall take judicial notice of such image or information.~~

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

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

§ 2. The civil practice law and rules is amended by adding a new rule 4532-b to read as follows:

§ 4532-b. An image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool, is admissible in evidence if such image, map, location, distance, calculation, or other information indicates the date such material was created and subject to a challenge that the image, map, location, distance, calculation, or other information taken from a web mapping service, a global satellite imaging site, or an internet mapping tool does not fairly and accurately portray that which it is being offered to prove. A party intending to offer such image or information in evidence at a trial or hearing shall, at least thirty days before the trial or hearing, give notice of such intent, providing

a copy or specifying the internet address at which such image or information may be inspected. No later than ten days before the trial or hearing, or later for good cause shown, a party upon whom such notice is served may object to the request to admit into evidence such image or information, stating the grounds for the objection. Unless objection is made pursuant to this subdivision, the court shall take judicial notice and admit into evidence such image, map, location, distance, calculation or other information.

§ 3. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2018, amending the civil practice law and rules relating to judicial notice of an image, map, location, distance, calculation, or other information taken from a web mapping service, as proposed in legislative bills numbers S. 9061 and A. 11191, takes effect.