

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE,
AT CHATTANOOGA

FILED
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ROY L. DENTON,
Plaintiff

v.

STEVE RIEVLEY,
in his individual capacity
Defendant

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U.S. DISTRICT COURT
Case No. 1:07-CV-211, TENN.

BY DEPT. CLERK
Chief Judge Curtis L. Collier

JURY DEMAND

**PLAINTIFF ROY L. DENTON'S MOTION *IN LIMINE* FOR JUDICIAL
CONSIDERATION FOR FEDERAL RULES OF EVIDENCE RULE 201**

Comes now, the Plaintiff Roy L. Denton, *pro se*, and moves this court for a judicial consideration of the application of Rule 201 of the Federal Rules of Evidence and hereby respectfully states the following:

MEMORANDUM AND LEGAL ARGUMENT

**MUST A UNITED STATES DISTRICT COURT TAKE
JUDICIAL NOTICE OF "DOMESTIC LAW"?**

When a court takes judicial notice of a certain fact, it obviates the need for parties to prove the fact in court. This lawsuit went to a jury trial on April 12 - 13, 2010 where the jury could not reach a verdict that resulted in a hopelessly deadlocked jury. A mistrial was declared. This court then ordered a telephone conference be had on April 19, 2010 between plaintiff, defendant and this court for the purpose of setting a new trial date. A new trial expected by plaintiff to last a maximum of three days is scheduled by Order to begin August 23, 2010.

Ordinarily, facts that relate to a case must be presented to the judge or jury through testimony or tangible evidence. However, if each fact in a case had to be proved through such presentation, the simplest case would take weeks to complete. According to the record, at the time the trial of this matter was had, several judicial notices filed with this court by the plaintiff were never adjudicated which in effect complicated the trial and as a proximate result, the jury was never instructed by the court that judicial notice of important factual issues, law, etc. relevant to the trial proceedings, which contributed to a deadlocked jury. However, those judicial notice requests were now moved by the plaintiff to be withdrawn. *See Court Doc. No. 109*

This pleading is necessary so as to avoid a manifest injustice regarding whether or not, this court has the authority to take judicial notice of “*domestic law*”. During the first jury trial of this matter, the plaintiff orally requested the court to take judicial notice of Tennessee state law 36-3-619. The Honorable Chief Judge Collier in a *sua sponte* ruling held that, “*I don’t see anything in the rule that would suggest that the court has the authority or should take judicial notice of law, and I’ve not been provided with any such authority. So the court will deny the request to take judicial notice of the statute cited*”. [*Rievley — Cross Exam. Pg. 35, 3 - 7*]

Respectfully, judicial notice is recognized in Rule 201 of the Federal Rules of Evidence. Rule 201 provides, in part, that “*[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.*” (*emphasis added*)

Therefore, under Rule 201 a trial court must take judicial notice of a well-known fact at the request of one of the parties, if the court is provided with information supporting the fact.

Federal Rules of Evidence — Rule 201 further provides that a court may take judicial

notice *at any time during a proceeding*. If a party objects to the taking of judicial notice, the court must give that party an opportunity to be heard on the issue. However, as herein stated, the *defendant has failed to object* to the oral judicial notice request in open court before a jury. As a matter of law, as Rule 201 seems to strictly apply, in a civil jury trial, *the court must inform the jury that it must accept the judicially noticed facts in the case as conclusively proved*.

With the second new trial quickly approaching, it is extremely prejudicial to the plaintiff, be he “*pro se*” or otherwise, to not have some sort of “judicial consideration” rendered by this court on how judicial notices are properly recognized and adjudicated in granting such judicial notices, or denying them. Moreover, most common judicially noticed facts include the location of streets, buildings, and geographic areas; periods of time; business customs; historical events; and federal, state, and international law.

- Federal Rules of Evidence 201 provides the following:

Rule 201. Judicial Notice of Adjudicative Facts

(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.

In a civil action or proceeding, the court shall instruct the jury to accept as conclusive

any fact judicially noticed. In a criminal case, the court shall instruct the jury that it may, but is not required to, accept as conclusive any fact judicially noticed. (*emphasis added*)
See attached Exhibit A.

Federal Rules of Evidence 201(b) permit judges to take judicial notice of two categories of facts: Those that are "***generally known within the territorial jurisdiction of the trial court***" or those that are "***capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned***" The Federal Rules of Evidence also notes that *judicial notice may be permissive or mandatory*. If it is permissive, then the court may choose to take judicial notice of the fact proffered, or may reject the request and require the party to introduce evidence in support of the point. If it is mandatory, then the court must take judicial notice of the fact proffered. In this instant case, the plaintiff orally moved the court for a judicial notice of a domestic state law, the court held the proposition that "*for domestic American law, I think it is presumed that the judge will know or can easily ascertain the law, so judicial notice is not done*". [Rievley — Cross Exam. Pg. 34]

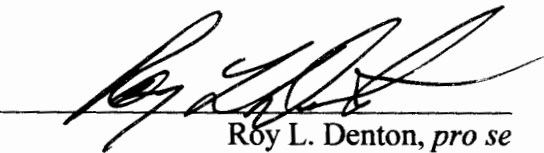
Since Judge Collier required the plaintiff to "***introduce evidence***" in support of the plaintiff's point in his judicial motion request, then reasonably it is assumed that Judge Collier determined that Mr. Denton's request for judicial notice was "*permissive*". Perhaps as a layman the *pro se* plaintiff does not understand the "wording" of Rule 201 and is mistaken in his understanding that any federal court, in any district, within the United States had authority to take judicial notice of "domestic law", under Rule 201.

However, the plaintiff presents to this court "his understanding" that any such request for judicial notice made for any domestic state law, made within the jurisdiction of this court, made at any time and not objected to by a party is established as reflective within committee comments

and guidelines relative to Rule 201, and was therefore not “*permissive*” but was “*mandatory*” upon this court to grant judicial notice to “domestic law“. Although the Federal Rules of Evidence does not expand upon the kinds of facts that would fall into one category or another, court cases, however, have determined that courts must take mandatory judicial notice of federal public laws and treaties, state public laws, and official regulations of both federal and local government agencies.

Therefore, for the reasons stated herein and as justice so requires, the plaintiff moves this honorable court for an Order reflecting it’s judicial consideration concerning Federal Rules of Evidence Rule 201 and to clarify for the record whether or not that this court has the authority to take judicial notice of a “*domestic state law*” or not, and as such, whether or not this court is “mandated” to accept judicial notice of a “domestic state law” at any time the request is made by a party for any such judicial notice and that any such judicial notice is to be accepted and as such, under Rule 201, presented to a jury that such judicial notice is accepted as a conclusive fact.

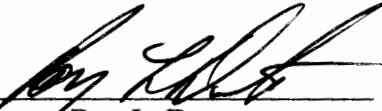
Respectfully submitted this 13th day of August, 2010.



Roy L. Denton, *pro se*
120 6th Ave.
Dayton, TN 37321
423-285-5581

CERTIFICATE OF SERVICE

The undersigned hereby certifies that an exact copy of this document has been served upon all parties of interest in this cause by placing an exact copy of same in the U.S. Mail addressed to such parties, with sufficient postage thereon to carry same to it's destination, on this 13th day of August, 2010.



Roy L. Denton

Copy mailed to:

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