

# TAKING JUDICIAL NOTICE OF INFORMATION FOUND IN OTHER COURT RECORDS

## Background & Analysis

The Florida Evidence Code authorizes a court to take judicial notice of its own records, the records of other Florida courts, and records from any other state or federal court of the United States. Section 90.201, Florida Statutes, lists matters that a court must take judicial notice of, including:

1. Decisional, constitutional, and public statutory law and resolutions of the Florida Legislature and the Congress of the United States.
2. Florida rules of court that have statewide application, its own rules, and the rules of United States courts adopted by the United States Supreme Court.
3. Rules of court of the United States Supreme Court and of the United States Courts of Appeal.

Judicial notice of discretionary matters listed in §90.202, Florida Statutes, can be noticed whether or not a party requests it, including, “(r)ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.” §90.202(6), Florida Statutes. However, if a party does request the court to take judicial notice of a record from this section and satisfies the notice requirements of §90.203, then taking judicial notice of these matters is mandatory. Section 90.204, Florida Statutes, discusses the propriety of judicial notice and allows for a hearing if the parties disagree.

In 2014, §90.204(4) was amended to read:

In family cases, the court may take judicial notice of any matter described in §90.202(6) when imminent danger to persons or property has been alleged and it is impractical to give prior notice to the parties of the intent to take judicial notice. Opportunity to present evidence relevant to the propriety of taking judicial notice under subsection (1) may be deferred until after judicial action has been taken. If judicial notice is taken under this subsection, the court shall, within 2 business days, file a notice in the pending case of the matters judicially noticed. For purposes of this subsection, the term “family cases” has the same meaning as provided in the Rules of Judicial Administration.

If a judge takes judicial notice, it must be made a part of the record. In re Adoption of Freeman, 90 So. 2d 109 (Fla. 1956). The Florida Supreme Court clearly explained the reason for this rule in Atlas Land Corporation v. Norman, 156 So. 885, 886 (Fla. 1934):

The court in which a cause is pending will take judicial notice of all its own records in such cause and of the proceedings relating thereto. But orders and other proceedings which do not properly belong to the record of a case being considered by a court must be proved or in some way directly brought into the record of the pending case by some order of the court referring to and adopting the outside records or proceedings as part of its own record, in order that an appellate court may, in the event of an appeal, know the exact nature, character, scope, and extent of the matters upon which the court below arrived at the decision appealed from and carried on the record to the appellate court.

In terms of the family court, the types of records sought will regularly be the court’s own records and those of “proceedings relating thereto,” as mentioned in Atlas. The decision in Atlas is also helpful in alerting the court of the need to make any material relied upon by the court in its decision making a part of the record.

Also note that in Dufour v. State, 69 So. 3d 235, 253-54 (Fla. 2011), as revised on denial of reh'g (Aug. 25, 2011), the court helped explain the limits of judicial notice:

In Florida, a court may take judicial notice of various matters including “[r]ecords of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States.” § 90.202(6), Fla. Stat. (2007). However, the fact that a record may be judicially noticed does not render all that is in the record admissible. Citation omitted. For instance, the court's authority to take judicial notice of records cannot be used to justify the wholesale admission of hearsay statements within those court files, such as through police reports or letters. See Stoll v. State, 762 So.2d 870, 876 (Fla.2000) (“We have never held that such otherwise inadmissible documents are automatically admissible just because they were included in a judicially noticed court file.”). In Stoll, we held that “documents contained in a court file, even if that entire court file is judicially noticed, are still subject to the same rules of evidence to which all evidence must adhere.” Id. at 877. In so holding, we noted the observations of another appellate court that there has been a seemingly widespread but mistaken notion that an item is judicially noticeable merely because it is part of the “court file.” Court files are often replete with letters, affidavits, legal briefs, privileged or confidential data, in camera materials, fingerprint records, probation reports, as well as depositions that may contain unredacted gossip and all manner of hearsay and opinion. None of these items are rendered admissible merely because they are part of the court file.