

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

1: Rule Discovery Scope and Limits. | Tennessee Administrative Office of the Courts

library national cooperative highway research program report rules of discovery and disclosure in highway condemnation proceedings jeremiah m. long and charles e. watts.

District courts and county courts at law have concurrent jurisdiction in eminent domain cases. A county court has no jurisdiction in eminent domain cases. Acts , 68th Leg. If an eminent domain case is pending in a county court at law and the court determines that the case involves an issue of title or any other matter that cannot be fully adjudicated in that court, the judge shall transfer the case to a district court. A district court may determine all issues, including the authority to condemn property and the assessment of damages, in any suit: Exercise of the eminent domain authority in all cases is governed by Sections Such disclosure shall take place not later than the earlier of: The entity shall inform the owner of the property that the owner has the right to: This section does not apply to acquisitions of real property for which an entity does not have eminent domain authority. Added by Acts , 74th Leg. Acts , 82nd Leg. Added by Acts , 80th Leg. Acts , 81st Leg. Added by Acts , 82nd Leg. Acts , 80th Leg. Added by Acts , 78th Leg. Otherwise, the venue of a condemnation proceeding is any county in which at least part of the property is located. The filing fee shall be due at the time of filing in accordance with Section Amended by Acts , 73rd Leg. The judge appointing the special commissioners shall give preference to persons agreed on by the parties. The judge shall provide each party a reasonable period to strike one of the three commissioners appointed by the judge. If a person fails to serve as a commissioner or is struck by a party to the suit, the judge shall appoint a replacement. The special commissioners shall schedule a hearing for the parties at a place that is as near as practical to the property being condemned or at the county seat of the county in which the proceeding is being held. A person competent to testify may serve the notice. The person shall write a return of service on the notice that states how and when it was served. The statement must be filed on or before the first Monday following the 20th day after the day the commissioners file their findings with the court. However, after the special commissioners have made an award, in an effort to obtain a lower award a condemnor may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner. Amended by Acts , 70th Leg. The department may not dismiss the condemnation proceedings merely to institute new proceedings that involve substantially the same condemnation against the same property owner solely to obtain a lower condemnation award. Added by Acts , 75th Leg. If a condemnor moves to dismiss a condemnation proceeding and subsequently files a petition to condemn substantially the same property interest from the same property owner, the court may not appoint new special commissioners but shall enter the award of the special commissioners in the first proceeding as the award in the second. The court shall award the property owner triple the amount of the expenses that were allowed the property owner prior to the dismissal of the first proceeding. The court shall pay the interest that accrues from the deposit or investment to the condemnor. Amended by Acts , 68th Leg. Added by Acts , 79th Leg. Laws that formerly governed the performance of functions by county clerks and judges in eminent domain proceedings are applicable to the clerks and judges of district courts and county courts at law. An entity with eminent domain authority shall disclose in writing to the property owner, at the time of acquisition of the property through eminent domain, that: A repurchase the property under Subchapter E; or B request from the entity certain information relating to the use of the property and any actual progress made toward that use; and 2 the repurchase price is the price paid to the owner by the entity at the time the entity acquired the property through eminent domain. A request under this section must contain sufficient details to allow the entity to identify the specific tract of land in relation to which the information is sought. As the basis for assessing actual damages to a property owner from a condemnation, the special commissioners shall admit evidence on: In this subsection, "direct access" means ingress and egress on or off a public road, street, or highway at a location where the remaining property adjoins that road, street, or highway. June 15, ; Acts , 75th Leg. Acts , 79th Leg.

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

The maximum distance of movement to be considered is 50 miles. Except where otherwise expressly provided by law, the interest acquired by a condemnor under this chapter does not include the fee simple title to real property, either public or private. If the commissioners award greater damages than the condemnor offered to pay before the proceedings began or if the decision of the commissioners is appealed and a court awards greater damages than the commissioners awarded, the condemnor shall pay all costs. If the property owner is ordered to pay the costs of the proceeding, the condemnor may recover the expense of notice from the property owner as part of the costs. After the special commissioners in an eminent domain proceeding have assessed the damages, they shall: The judge of a court hearing a proceeding under this chapter shall inform the clerk of the court as to a decision by the special commissioners on the day the decision is filed or on the next working day after the day the decision is filed. Not later than the next working day after the day the decision is filed, the clerk shall send notice of the decision by certified or registered United States mail, return receipt requested, to the parties in the proceeding, or to their attorneys of record, at their addresses of record. Added by Acts , 68th Leg. If a condemnor in a condemnation proceeding has taken possession of property pending litigation and the court finally decides that the condemnor does not have the right to condemn the property, the court shall order the condemnor to surrender possession of the property and issue a writ of possession to the property owner. A judgment of a court under this chapter vests a right granted to a condemnor. Not later than the th day after the date an entity that acquired a real property interest through eminent domain determines that the former property owner is entitled to repurchase the property under Section

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

2: Federal Rules of Civil Procedure - Wikipedia

Existing federal and state cases are discussed on the rules of discovery and disclosure in highway condemnation proceedings. The statutes and rules adopted in various jurisdictions to resolve the uncertainties attending the discovery of expert opinion are presented.

U restitution judgment; and V tax court filings. A party must make the initial disclosures at or within 60 days after the original due date when an answer is required, unless a different time is set by stipulation or court order, or unless an objection is made in a proposed discovery plan submitted as part of a civil cover sheet required under Rule of the General Rules of Practice for the District Courts. In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure. A party that is first served or otherwise joined after the initial disclosures are due under Rule A party must make its initial disclosures based on the information then reasonably available to it. In addition to the disclosures required by Rule The report must contain: Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state: A the subject matter on which the witness is expected to present evidence under Minnesota Rule of Evidence , , or ; and B a summary of the facts and opinions to which the witness is expected to testify. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made: A at least 90 days before the date set for trial or for the case to be ready for trial; or B if the evidence is intended solely to contradict or rebut evidence on the same subject matter identified by another party under Rule The parties must supplement these disclosures when required under Rule A the name and, if not previously provided, the address and telephone number of each witness - separately identifying those the party expects to present and those it may call if the need arises; B the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and C an identification of each document or other exhibit, including summaries of other evidence - separately identifying those items the party expects to offer and those it may offer if the need arises. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: An objection not so made - except for one under Minnesota Rule of Evidence or - is waived unless excused by the court for good cause. Unless the court orders otherwise, all disclosures under Rule Amended effective July 1, Parties may obtain discovery by one or more of the following methods: Unless otherwise limited by court order, the scope of discovery is as follows. Information within this scope of discover need not be admissible in evidence to be discoverable. The court may establish or alter the limits on the number of depositions and interrogatories and may also limit the length of depositions under Rule 30 and the number of requests under Rule The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause and proportionality, considering the limitations of Rule The court may specify conditions for the discovery. The frequency or extent of use of the discovery methods otherwise permitted under these rules shall be limited by the court if it determines that: In any action in which there is an insurance policy that may afford coverage, any party may require any other party to disclose the coverage and limits of such insurance and the amounts paid and payable thereunder and, pursuant to Rule 34 , may obtain production of the insurance policy; provided, however, that this provision will not permit such disclosed information to be introduced into evidence unless admissible on other grounds. Subject to the provisions of Rule In ordering discovery of such materials when the required showing has been

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a party or other person may obtain without the required showing a statement concerning the action or its subject matter previously made by that person who is not a party. If the request is refused, the person may move for a court order. The provisions of Rule For purposes of this paragraph, a statement previously made is 1 a written statement signed or otherwise adopted or approved by the person making it, or 2 a stenographic, mechanical, electrical, or other recording, or a transcription thereof, that is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. Discovery of facts known and opinions held by experts, otherwise discoverable pursuant to Rule B Upon motion, the court may order further discovery by other means, subject to such restrictions as to scope and such provisions, pursuant to Rule After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved. Amended effective July 1, ; amended effective January 1, ; amended effective July 1, ; amended effective May 28, ; amended effective July 1, ; amended effective July 1, The rule is amended to conform to Fed. Although the proposed changes were expected to create as many problems as they solved, see, e. Herr, Applying Amended Rule 26 b 1 in Litigation: The New Scope of Discovery, in F. See generally Thomas D. Courts have simply not found the change dramatic nor given it a draconian interpretation. The narrowing of the scope of discovery as a matter of right does not vitiate in any way the traditional rule that discovery should be liberally allowed. It should be limited to the claims and defenses raised by the pleadings, but the requests should still be liberally construed. Advisory Committee Comment - Amendment Rule The rule makes information that is not "reasonably accessible because of undue burden or cost" not normally discoverable. This rule is identical to its federal counterpart, adopted in The rule requires that it be identified in response to an appropriate request, but if it is identified as "not reasonably accessible," it need not be produced in the absence of further order. It is not strictly exempt from discovery, as the court may, upon motion that "shows good cause," order disclosure of the information. The rule explicitly authorizes the court to impose conditions on any order for disclosure of this information, and conditions that either ease the undue burden or minimize the total cost or cost borne by the producing party would be appropriate. The rule creates a mandatory obligation to return, sequester, or destroy information that is produced in discovery if the producing party asserts that it is subject to a privilege or work-product protection. The information cannot be used for any purpose until the privilege claim is resolved. The rule provides a mechanism for the receiving party to have the validity of the privilege claim resolved by the court. The rule does not create any presumption or have any impact on the validity of the claim of privilege, nor does it excuse the inadvertent or regretted production. If the court determines that that production waived an otherwise valid privilege, then the information should be ordered for production or release from sequestration of the information. Advisory Committee Comment - Amendments Rule The amendments are intended to improve the operation of the rule and to avoid some of the problems that were encountered under the former rule. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The amendment explicitly provides that cost-shifting is one option available to the court in implementing protective relief, where appropriate. The rule is not intended to make cost-shifting a routine part

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

of discovery motions, but recognizes that there are some situations where it is appropriate. The rule is also subdivided and numbered to make it easier to use and cite; the headings are not intended to affect the interpretation of the rule. Notwithstanding the provisions of Rules 34 and 37, more than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered: A to that party by any other party; and B by that party to any plaintiff or to any other party that has been served. The request is considered to have been served when the parties have conferred and prepared a discovery plan as required by Rule 37. Expedited timing and modified content of certain disclosure and discovery obligations may be required by order of the supreme court adopting special rules for the pilot expedited civil litigation track. Amended effective July 1, 2013; amended effective July 1, 2014. The rule permits a party responding to the request additional time to prepare an appropriate response, but does not compel earlier response or production. The service of an earlier request may also provide earlier notice to a party of the need to preserve evidence for use in the case, and thus eliminate some disputes over spoliation of evidence. The effect of the rule is to authorize earlier service of Rule 34 requests but the rule does not allow a serving party to accelerate the response deadline by doing so. A party is under a duty seasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert, the duty extends to information contained in interrogatory responses, in any report of the expert, and to information provided through a deposition of the expert. Except in a proceeding exempted from initial disclosure under Rule 37, in conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 37. The attorneys of record and all self-represented litigants that have appeared in the case are jointly responsible for arranging the conference, and for attempting in good faith to agree on the proposed discovery plan. A written report outlining the discovery plan must be filed with the court within 14 days after the conference or at the time the action is filed, whichever is later. The court may order the parties or attorneys to attend the conference in person. At any time after service of the summons, the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorney for any party if the motion includes: All parties and attorneys are under a duty to participate in good faith in the framing of any proposed discovery plan. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after the service of the motion. Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any, and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires. Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial conference authorized by Rule 37. Amended effective July 1, 2013; amended effective July 1, 2014; amended effective July 1, 2015. These changes require the party seeking a discovery conference to address electronic discovery issues, but do not dictate any particular resolution or conference agenda for them. Many cases will not involve electronic discovery issues, and there is no need to give substantial attention to them in a request for a conference under this rule. This requirement recognizes both the importance of document-preservation issues and the benefits of addressing the issue early in the case. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

3: Minnesota Legislature - Office of the Revisor of Statutes

rules of discovery and disclosure in highway condemnation proceedings The Federal and State cases on this subject are discussed in this paper as well as the statutes and rules adopted in various jurisdictions to resolve the uncertainties attending the discovery of expert opinion.

Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and electronically stored information, i. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden and cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause. The court shall specify conditions for the discovery. The frequency or extent of use of the discovery methods set forth in subdivision The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule For purposes of this paragraph, a statement previously made is A a written statement signed or otherwise adopted or approved by the person making it, or B a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision 1 of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained only as follows: A i A party may through interrogatories require any other party to identify each person whom the other party expects to call as an expert witness at trial, to state the subject matter on which the expert is expected to testify, and to state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. B A party may not discover the identity of, facts known by, or opinions held by an expert who has been consulted by another party in anticipation of litigation or preparation for trial and who is not to be called as a witness at trial except as provided in Rule C Unless manifest injustice would result, i the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery under subdivisions 4 A ii and 4 B of this rule; and ii with respect to discovery obtained under subdivision 4 A ii of this rule the court may require, and with respect to discovery obtained under subdivision 4 B of this rule the court shall require, the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert. When a party withholds information otherwise discoverable under the rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege protection. If information is produced in discovery that is

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved. The term "electronically stored information" has the same broad meaning in Rule 37. The term "data compilations" is deleted as unnecessary because it is a subset of both documents and electronically stored information. Electronic storage systems often make it easier to locate and retrieve information. These advantages are properly taken into account in determining the reasonable scope of discovery in a particular case. But some sources of electronically stored information can be accessed only with substantial burden and cost. In a particular case, these burdens and costs may make the information on such sources not reasonably accessible. It is not possible to define in a rule the different types of technological features that may affect the burdens and costs of accessing electronically stored information. Information systems are designed to provide ready access to information used in regular ongoing activities. They also may be designed so as to provide ready access to information that is not regularly used. But a system may retain information on sources that are accessible only by incurring substantial burdens or costs. The amendment is added to regulate discovery from such sources. Under this rule, a responding party should produce electronically stored information that is relevant, not privileged, and reasonably accessible, subject to the The responding party must also identify, by category or type, the sources containing potentially responsive information that it is neither searching nor producing. The identification should, to the extent possible, provide enough detail to enable the requesting party to evaluate the burdens and costs of providing the discovery and the likelihood of finding responsive information on the identified sources. Whether a responding party is required to preserve unsearched sources of potentially responsive information that it believes are not reasonably accessible depends on the circumstances of each case. It is often useful for the parties to discuss this issue early in discovery. In many circumstances the requesting party should obtain and evaluate the information from such sources before insisting that the responding party search and produce information contained on sources that are not reasonably accessible. If the requesting party continues to seek discovery of information from sources identified as not reasonably accessible, the parties should discuss the burdens and costs of accessing and retrieving the information, the needs that may establish good cause for requiring all or part of the requested discovery even if the information sought is not reasonably accessible, and conditions on obtaining and producing the information that may be appropriate. If the parties cannot agree whether, or on what terms, sources identified as not reasonably accessible should be searched and discoverable information produced, the issue may be raised either by a motion to compel discovery or by a motion for a protective order. The parties must confer before bringing either motion. If the parties do not resolve the issue and the court must decide, the responding party must show that the identified sources of information are not reasonably accessible because of undue burden or cost. The requesting party may need discovery to test this assertion. Once it is shown that a source of electronically stored information is not reasonably accessible, the requesting party may still obtain discovery by showing good cause, considering the limitations of Rule 37. The decision whether to require a responding party to search for and produce information that is not reasonably accessible depends not only on the burdens and costs of doing so, but also on whether those burdens and costs can be justified in the circumstances of the case. Appropriate considerations may include: The responding party has the burden as to one aspect of the inquiry - whether the identified sources are not reasonably accessible in light of the burdens and costs required to search for, retrieve, and produce whatever responsive information may be found. The requesting party has the burden of showing that its need for the discovery outweighs the burdens and costs of locating, retrieving, and producing the information. In some cases, the court will be able to determine whether the identified sources are not reasonably accessible and whether the

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

requesting party has shown good cause for some or all of the discovery, consistent with the limitations of Rule 26(b)(1). The good-cause determination, however, may be complicated because the court and parties may know little about what information the sources identified as not reasonably accessible might contain, whether it is relevant, or how valuable it may be to the litigation. In such cases, the parties may need some focused discovery, which may include sampling of the sources, to learn more about what burdens and costs are involved in accessing the information, what the information consists of, and how valuable it is for the litigation in light of information that can be obtained by exhausting other opportunities for discovery. The good-cause inquiry and consideration of the Rule 26(b)(1) conditions may take the form of limits on the amount, type, or sources of information required to be accessed and produced. The conditions may also include payment by the requesting party of part or all of the reasonable costs of obtaining information from sources that are not reasonably accessible. The limitations of Rule 26(b)(1) When the review is of electronically stored information, the risk of waiver, and the time and effort required to avoid it, can increase substantially because of the volume of electronically stored information and the difficulty in ensuring that all information to be produced has in fact been reviewed. The amendment to Rule 26(b)(1) The second paragraph of Rule 26(b)(1) The courts have developed principles to determine whether, and under what circumstances, waiver results from inadvertent production of privileged or protected information. The second paragraph works in tandem with amended Rule 26(b)(1) Agreements reached under Rule 26(b)(1) Such agreements and orders ordinarily control if they adopt procedures different from those in Rule 26(b)(1) A party asserting a claim of privilege or protection after production must give notice to the receiving party. That notice should be in writing unless the circumstances preclude it. Such circumstances could include the assertion of the claim during a deposition. The notice should be as specific as possible in identifying the information and stating the basis for the claim. Because the receiving party must decide whether to challenge the claim and may sequester the information and submit it to the court for a ruling on whether the claimed privilege or protection applies and whether it has been waived, the notice should be sufficiently detailed so as to enable the receiving party and the court to understand the basis for the claim and to determine whether waiver has occurred. Courts will continue to examine whether a claim of privilege or protection was made at a reasonable time when delay is part of the waiver determination under the governing law. After receiving notice, each party that received the information must promptly return, sequester, or destroy the information and any copies it has. The option of sequestering or destroying the information is included in part because the receiving party may have incorporated the information in protected trial-preparation materials. No receiving party may use or disclose the information pending resolution of the privilege claim. The receiving party may present to the court the questions whether the information is privileged or protected as trial-preparation material, and whether the privilege or protection has been waived. In presenting the question, the party may use the content of the information only to the extent permitted by the applicable law of privilege, protection for trial-preparation material, and professional responsibility. If a party disclosed the information to nonparties before receiving notice of a claim of privilege or protection as trial-preparation material, it must take reasonable steps to retrieve the information and to return it, sequester it until the claim is resolved, or destroy it. As with claims made under Rule 26(b)(1) Advisory Commission Comment [The change permitting the discovery of a list of cases where the expert gave testimony during the previous four years includes expert testimony given in a hearing, deposition, trial, administrative or arbitration proceeding. The list should include the case name, docket number and jurisdiction for court and administrative proceedings and, for arbitrations, information sufficient for the recipient to identify the counsel to the parties in the arbitration.

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

4: Discovery: What and When the Prosecution Must Disclose | www.enganchecubano.com

rules of discovery and disclosure in highway condemnation proceedings. existing federal and state cases are discussed on the rules of discovery and disclosure in highway condemnation proceedings. the statutes and rules adopted in various jurisdictions to resolve the uncertainties attending the discovery of expert opinion are presented.

Except as exempted by Rule 26 a 1 B or as otherwise stipulated or ordered by the court, a party must, without awaiting a discovery request, provide to the other parties: B Proceedings Exempt from Initial Disclosure. The following proceedings are exempt from initial disclosure: In ruling on the objection, the court must determine what disclosures, if any, are to be made and must set the time for disclosure. A party that is first served or otherwise joined after the Rule 26 f conference must make the initial disclosures within 30 days after being served or joined, unless a different time is set by stipulation or court order. A party must make its initial disclosures based on the information then reasonably available to it. In addition to the disclosures required by Rule 26 a 1 , a party must disclose to the other parties the identity of any witness it may use at trial to present evidence under Federal Rule of Evidence , , or The report must contain: Unless otherwise stipulated or ordered by the court, if the witness is not required to provide a written report, this disclosure must state: D Time to Disclose Expert Testimony. A party must make these disclosures at the times and in the sequence that the court orders. Absent a stipulation or a court order, the disclosures must be made: E Supplementing the Disclosure. The parties must supplement these disclosures when required under Rule 26 e. In addition to the disclosures required by Rule 26 a 1 and 2 , a party must provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment: B Time for Pretrial Disclosures; Objections. Unless the court orders otherwise, these disclosures must be made at least 30 days before trial. Within 14 days after they are made, unless the court sets a different time, a party may serve and promptly file a list of the following objections: An objection not so madeâ€”except for one under Federal Rule of Evidence or â€”is waived unless excused by the court for good cause. Unless the court orders otherwise, all disclosures under Rule 26 a must be in writing, signed, and served. Unless otherwise limited by court order, the scope of discovery is as follows: Information within this scope of discovery need not be admissible in evidence to be discoverable.. By order, the court may alter the limits in these rules on the number of depositions and interrogatories or on the length of depositions under Rule By order or local rule, the court may also limit the number of requests under Rule A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26 b 2 C. The court may specify conditions for the discovery. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that: A Documents and Tangible Things. But, subject to Rule 26 b 4 , those materials may be discovered if: B Protection Against Disclosure. If the request is refused, the person may move for a court order, and Rule 37 a 5 applies to the award of expenses. A previous statement is either: A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26 a 2 B requires a report from the expert, the deposition may be conducted only after the report is provided. Rules 26 b 3 A and B protect drafts of any report or disclosure required under Rule 26 a 2 , regardless of the form in which the draft is recorded. Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only: Unless manifest injustice would result, the court must require that the party seeking discovery: When a party withholds information otherwise discoverable by claiming that the

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

information is privileged or subject to protection as trial-preparation material, the party must: If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending or as an alternative on matters relating to a deposition, in the court for the district where the deposition will be taken. The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: A forbidding the disclosure or discovery; B specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery; C prescribing a discovery method other than the one selected by the party seeking discovery; D forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters; E designating the persons who may be present while the discovery is conducted; F requiring that a deposition be sealed and opened only on court order; G requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and H requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery. Rule 37 a 5 applies to the award of expenses. A party may not seek discovery from any source before the parties have conferred as required by Rule 26 f , except in a proceeding exempted from initial disclosure under Rule 26 a 1 B , or when authorized by these rules, by stipulation, or by court order. More than 21 days after the summons and complaint are served on a party, a request under Rule 34 may be delivered: B When Considered Served. The request is considered to have been served at the first Rule 26 f conference. A methods of discovery may be used in any sequence; and B discovery by one party does not require any other party to delay its discovery. A party who has made a disclosure under Rule 26 a 1 B or who has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response: A in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or B as ordered by the court. Except in a proceeding exempted from initial disclosure under Rule 26 a 1 B or when the court orders otherwise, the parties must confer as soon as practicable and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16 b. In conferring, the parties must consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rule 26 a 1 ; discuss any issues about preserving discoverable information; and develop a proposed discovery plan. The attorneys of record and all unrepresented parties that have appeared in the case are jointly responsible for arranging the conference, for attempting in good faith to agree on the proposed discovery plan, and for submitting to the court within 14 days after the conference a written report outlining the plan. The court may order the parties or attorneys to attend the conference in person. If necessary to comply with its expedited schedule for Rule 16 b conferences, a court may by local rule: A with respect to a disclosure, it is complete and correct as of the time it is made; and B with respect to a discovery request, response, or objection, it is: If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. Notes As amended Dec. July 1, ; Feb. July 1, ; Mar. July 1, ; Apr. This rule freely

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

authorizes the taking of depositions under the same circumstances and by the same methods whether for the purpose of discovery or for the purpose of obtaining evidence. Many states have adopted this practice on account of its simplicity and effectiveness, safeguarding it by imposing such restrictions upon the subsequent use of the deposition at the trial or hearing as are deemed advisable. Codes Carroll, Civ. Rules of Practice adopted by the Supreme Ct. This and subsequent rules incorporate, modify, and broaden the provisions for depositions under U. These statutes are superseded insofar as they differ from this and subsequent rules. While a number of states permit discovery only from parties or their agents, others either make no distinction between parties or agents of parties and ordinary witnesses, or authorize the taking of ordinary depositions, without restriction, from any persons who have knowledge of relevant facts. Code Bagby, Art. Rules of Practice adopted by Supreme Ct. The more common practice in the United States is to take depositions on notice by the party desiring them, without any order from the court, and this has been followed in these rules. Note to Subdivision b. While the old chancery practice limited discovery to facts supporting the case of the party seeking it, this limitation has been largely abandoned by modern legislation. Note to Subdivisions d , e , and f. The restrictions here placed upon the use of depositions at the trial or hearing are substantially the same as those provided in U. The amendment eliminates the requirement of leave of court for the taking of a deposition except where a plaintiff seeks to take a deposition within 20 days after the commencement of the action. The retention of the requirement where a deposition is sought by a plaintiff within 20 days of the commencement of the action protects a defendant who has not had an opportunity to retain counsel and inform himself as to the nature of the suit; the plaintiff, of course, needs no such protection. The present rule forbids the plaintiff to take a deposition, without leave of court, before the answer is served. Sometimes the defendant delays the serving of an answer for more than 20 days, but as 20 days are sufficient time for him to obtain a lawyer, there is no reason to forbid the plaintiff to take a deposition without leave merely because the answer has not been served. In all cases, Rule 30 a empowers the court, for cause shown, to alter the time of the taking of a deposition, and Rule 30 b contains provisions giving ample protection to persons who are unreasonably pressed. The modified practice here adopted is along the line of that followed in various states. The amendments to subdivision b make clear the broad scope of examination and that it may cover not only evidence for use at the trial but also inquiry into matters in themselves inadmissible as evidence but which will lead to the discovery of such evidence. The purpose of discovery is to allow a broad search for facts, the names of witnesses, or any other matters which may aid a party in the preparation or presentation of his case. In such a preliminary inquiry admissibility at trial should not be the test as to whether the information sought is within the scope of proper examination. Such a standard unnecessarily curtails the utility of discovery practice. Of course, matters entirely without bearing either as direct evidence or as leads to evidence are not within the scope of inquiry, but to the extent that the examination develops useful information, it functions successfully as an instrument of discovery, even if it produces no testimony directly admissible. *United Air Lines Transportation Corp.* Thus hearsay, while inadmissible itself, may suggest testimony which properly may be proved. Thus it has been said that inquiry might not be made into statements or other matters which, when disclosed, amounted only to hearsay. See *Maryland for use of Montvila v. Pan-American Bus Lines, Inc.* The contrary and better view, however, has often been stated.

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

5: PROPERTY CODE CHAPTER EMINENT DOMAIN

Discovery rules permit parties in a lawsuit to seek and obtain evidence from other parties or non-parties. The following Rules in the Florida Rules of Civil Procedure pertain to discovery matters: Rule General Provisions Governing Discovery Rule Inadvertent Disclosure of Privileged Materials Rule

For example, assault requires intent , so if the plaintiff has failed to plead intent, the defense can seek dismissal by filing a 12 b 6 motion. Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true even if doubtful in fact. A 12 b 6 motion cannot include additional evidence such as affidavits. Additionally, because 12 b 1 motions are so fundamental, they may never be waived throughout the course of litigation, and 12 b 6 and 12 b 7 motions may be filed at any time until trial ends. Rule 13 describes when a defendant is allowed or required to assert claims against other parties to the suit joinder. The law encourages people to resolve all their differences as efficiently as possible; consequently, in many jurisdictions, counterclaims claims against an opposing party that arise out of the same transaction or occurrence compulsory counterclaims must be brought during the original suit, or they will be barred from future litigation preclusion. Any counterclaims may be brought, even if they are not compulsory permissive counterclaims , however a crossclaim claims against a coparty , while not compulsory, must arise out of the same transaction or occurrence of the original suit or a counterclaim, or it must relate to the property in the original suit. Rule 14 allows parties to bring in other third parties to a lawsuit. Rule 15 allows pleadings to be amended or supplemented. Plaintiffs may amend once before an answer is filed, a defendant can amend once within 21 days of serving an answer, and if there is no right to amend, seek leave of court "leave shall be given when justice so requires. Rule 17 states that all actions must be prosecuted in the name of the real party in interest, that is, the plaintiff must be person or entity whose rights are at issue in the case. Rule 18 " Joinder of Claims and Remedies " states that a plaintiff who may plead in a single civil action as many claims as the plaintiff has against a defendant, even if the claims are not related, and may request any remedy to which the law entitles the plaintiff. Of course, each claim must have its own basis for jurisdiction in the court in which it is brought or be subject to dismissal. Rule 19 " Compulsory Joinder of Parties " if a person who is not a party to the suit is "necessary" to just adjudication of the action, under the criteria set forth in subsection a , then upon motion of any party that person shall be made a party, served with suit, and required to participate in the action. If the person cannot be made a party for any reason, such as lack of jurisdiction, inability to be located, etc. If so, the action must be dismissed. Rule 20 Permissive Joinder of Parties. Joinder of parties at common law was controlled by the substantive rules of law, often as reflected in the forms of action, rather than by notions of judicial economy and trial convenience. Permissive joinder of plaintiffs allows the plaintiffs having an option to join their claims when they were not joint. Rule 22 governs the procedure for interpleader. It allows an interpleader to be brought by a plaintiff who is subject to multiple liability even though 1. A defendant exposed to similar liability may also seek interpleader. Rule 23 governs the procedure for class action litigation. In a class action, a single plaintiff or small group of plaintiffs seeks to proceed on behalf of an entire class who have been harmed by the same conduct by the same defendants. Court approval is required for this procedure to be used. Title V " Discovery[edit] Rules 26 to Title V covers the rules of discovery. Modern civil litigation is based upon the idea that the parties should not be subject to surprises at trial. Discovery is the process whereby civil litigants seek to obtain information both from other parties and from non parties or third parties. Parties have a series of tools with which they can obtain information: Document requests Rule A party can require other parties to admit or deny the truth of certain statements Depositions Rule A party can require at most 10 individuals or representatives of organizations to make themselves available for questioning for a maximum of one day of 7 hours, without obtaining leave of court. FRCP Rule 37 oversees the possible sanctions that someone may seek if a failure to preserve data takes place and outlines how courts interpret if one party is at a disadvantage.

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

Information about any expert witness testimony is also required. FRCP Rule 26 provides general guidelines to the discovery process, it requires the plaintiff to initiate a conference between the parties to plan the discovery process. The parties should attempt to agree on the proposed discovery plan, and submit it to the court within 14 days after the conference. This should be at least 60 days before the trial. The trial target date is usually 6 months to 2 years after the conference. Deadline for amending pleadings. Normally it is at least 30 days before the discovery ends. Deadline for initial expert disclosures and rebuttal expert disclosures. Deadline for dispositive motions. Usually it is at least 30 days after the discovery end-date. Deadline for Pre-trial order. If any dispositive motions are filed, the Joint Pretrial Order can be filed at least 30 days after the last decision on the merits. Unless all parties agree otherwise, the parties should submit to each other the initial disclosures under Rule 26 a within 14 days after the conference. As stated above, there is a limitation on number of interrogatories and depositions, but there is no limitation on RFAs and RFPs. Some states, like California, have different limitations set in their Local Rules. FRCP requires that the party to whom the request for Interrogatories, RFA or RFP is directed must respond in writing within 30 days after being served, otherwise the requestor can file a motion to compel discovery and for sanctions. Title VI " Trial[edit] Rules 38 to Title VI deals generally with the trial of civil actions, although some other topics are also included. These rules must be construed in light of the Seventh Amendment to the United States Constitution , which preserves a right to jury trial in most actions at common law as opposed to equity cases. Rule 40 deals in general terms with the order in which cases will be scheduled for trial and has little significance in practice. Rule 41 deals with dismissal of actions. With certain exceptions e. An action may also be involuntarily dismissed by the court if the plaintiff fails to comply with deadlines or court orders. Rule 42 deals with consolidation of related cases or the holding of separate trials. Rule 43 addresses the taking of testimony, which is to be taken in open court whenever possible. Rule 44 governs authentication of official records. Rule 45 deals with subpoenas. A subpoena commands a person to give testimony, to produce documents for inspection and copying, or both. Although included in the Chapter headed "trials," subpoenas can also be used to obtain document production or depositions of non-parties to the litigation during the pre-trial discovery stage. The next several rules govern jury trials. Rule 47 provides for the selection of jurors and rule 48 governs the number of jurors in a civil case. A civil jury must consist of between six and twelve jurors six jurors are presently used in the vast majority of federal civil trials; juries of twelve are still required in federal criminal cases. Rule 49 provides for use of "special verdicts" in jury trials, under which the jury may be asked to respond to specific questions rather than just finding liability or non-liability and determining the amount of the damages, if any. Rule 50 addresses situations in which a case is so one-sided that the court may grant "judgment as a matter of law" taking the case from the jury. Rule 51 governs jury instructions. Rule 52 provides procedure for the judge to hand down findings and conclusions following non-jury trials. Rule 53 governs masters, who are typically lawyers designated by the court to act as neutrals and assist the court in a case. Rule 56 deals with summary judgment. It is considered the last gate-keeping function before trial, answering the question of whether the claim could even go to a jury. A successful summary judgment motion persuades the court there is no "genuine issue of material fact" and also that the moving party is "entitled to judgment as a matter of law. Then the burden shifts to the non-moving party, which has to show that the claim is adequate to let it get to the jury. The non-movant can submit affidavits, depositions, and other material. A court grants summary judgment when there is no way the movant can lose at trial. A partial summary judgment usually pertains only to certain claims, not the whole case. Rule 50 also deals with judgments as a matter of law, however Rule 50 decisions take place after a jury has been empanelled. A motion under Rule 50 a generally takes place immediately after the opposing party has finished presenting its case and must take place before the case is submitted to the jury. Importantly, to keep open the option of moving for a "judgment notwithstanding the verdict," or "judgment non obstante verdicto" after the jury has returned a verdict, one must file a Rule 50 a motion. A renewed 50 a motion must be filed within 28 days of verdict entry. Rule 50 also covers motions for a new trial. These motions can be granted, denied, conditionally granted, or conditionally denied. Conditional

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

grants or denials cover what will happen if the case is reversed on appeal. For instance, a case that ends with a successfully renewed Rule 50 a motion to overturn the jury verdict may also include a conditional grant of a new trial. If the losing party wins their appeal, the trial will start over again. A motion for a new trial is a Rule 59 a 1 motion and is generally filed simultaneously and as an alternative to a renewal of a Rule 50 a motion. This Title deals with remedies that may be granted by a federal court – both provisional remedies that may be ordered while the action is pending as well as final relief that may be granted to the winning party at the end of the case. Rule 64 is captioned "Seizure of Person or Property" and authorizes procedures such as Prejudgment attachment , replevin , and garnishment. In general, these remedies may be awarded when they would be authorized under the law of the state in which the federal court is located – a rare instance in which the Federal Rules of Civil Procedure, generally designed to promote uniformity of practice in the federal districts throughout the country, defer to state law. Rule 65 governs the procedure on applications for preliminary injunctions and temporary restraining orders. Rule 66 deals with receivership. Rule 67 deals with funds deposited in court, such as in interpleader actions. Rule 68 governs the offer of judgment procedure under which a party may make a confidential offer of settlement in an action for money damages. Rules 69 and 70 deal with execution of judgments and orders directing a party to take a specific act. Rule 71 deals with the effect of judgments on persons who are not parties to the action. Chapter IX currently deals with special types of litigation that may take place in the federal courts. These rules were abrogated in when they were superseded by the Federal Rules of Appellate Procedure , a separate set of rules specifically governing the Courts of Appeals.

RULES OF DISCOVERY AND DISCLOSURE IN HIGHWAY CONDEMNATION PROCEEDINGS pdf

Honor to the Bride Ethics of the Sages Construction of swimming proficiency tests for university men and women A brief guide to the singularity Sonnets and a Lovers Complaint (Penguin Classics) The Bell Rings Again Childrens book on american history Write Stories to Me, Grandpa The compulsion to think : testimony by Alan David Sophrin Aaron Liebowitz Denise R. Resnik Alternative investments caia second edition wiley What is graffiti? The Lost Works of Micah Soulpoe The Alaska Mother Goose (Last Wilderness Adventure) Is young Absalom safe in his youth group? Macroeconomic consequences of remittances 7.0. outcomes and achievements Reclaiming dream lovers: couples in dialogue Polly Young-Eisendrath Harry potter 6 livro The typicality of Oliver Wendell Holmes, by E. Carter. Confirmation and the charismata Otis service tool manual Distal humerus Michael T. Archdeacon The case of the silver skull. The art of kissing william cane The story of agricultural economics in the United States, 1840-1932: men, services, ideas Knowing the camera Daily math review 6th grade Velcro triangles : elite mobilization of local antidrug issue coalitions John D. McCarthy Political fights, popular fetes Instructors manual with tests to accompany Basic mathematics Pirate Hannah Pritchard Writing for the Educational Market Denver outsiders : diversity and difference Jim Henderson Building scalable web applications using the cloud Papermaking Techniques Book The Sports Address Bible and Almanac Tyro Review of the Arts (English Little Magazines) The leech of folkestone R.H. Barham In search of Western Europe