

**[PROPOSED REVISED] CHAPTER 16
LOS ANGELES COUNTY COURT RULES**

Set forth below is a proposed complete revision of Chapter 16, Eminent Domain, of the Local Rules.

September 30, 2009

Commissioner Bruce E. Mitchell

RULE 16.0 PURPOSE

This chapter sets out the scheduling and conduct of eminent domain and inverse condemnation proceedings, to the extent specified. This chapter should be read in conjunction with the Eminent Domain Law, Code Of Civil Procedure §§ 1230.010 et seq. These rules shall apply to eminent domain and inverse condemnation cases filed in the Central District and to all such cases filed in other districts unless specifically designated otherwise.

**RULE 16.1 FILING OF EMINENT DOMAIN OR
INVERSE CONDEMNATION ACTIONS**

In general, eminent domain and inverse condemnation matters may be filed in the Central District irrespective of property location within Los Angeles County, or may be filed in a district where the property is located. (LASCR, rule 2.0(c).) Actions for actual physical damage to land, buildings, or other items affixed to the land must be filed in the district where the damage occurred. (LASCR, rule 2.0(b)(1).)

RULE 16.2 GENERAL PROVISIONS

(a) Eminent Domain Department. For eminent domain and inverse condemnation actions filed in the Central District, the Eminent Domain Department (Department 59) has been designated by the Presiding Judge as a special department with respect to the following matters (LASCR, rules 2.5(d) and (e), and 7.2(b).):

- (1) All pretrial conferences;
- (2) All law and motion matters, except motions to transfer to another district, which are heard in Department 1;
- (3) All discovery procedures;
- (4) All ex parte orders and judgments;
- (5) All stipulated and other uncontested matters; and
- (6) Bench or jury trials when stipulated to by all parties.

In Districts other than Central, eminent domain cases shall be assigned as directed by the Supervising Judge.

(b) Trial Priority. Eminent domain cases have precedence over other civil matters for hearing or trial, in accordance with Code of Civil Procedure section 1260.010. Pursuant to the time requirements of rule 16.6, the trial date will ordinarily not be less than one year from the filing of the complaint.

RULE 16.3 PRE-FILING TESTING FOR CONTAMINATION OR OTHER CONDITIONS

To avoid disruption and delay in eminent domain proceedings as a result of the discovery of contamination or other conditions, condemnors should, whenever feasible, take advantage of the procedures provided in Code of Civil Procedure, § 1245.010 et seq., to petition to enter and test for such contamination or condition prior to filing the complaint in eminent domain.

RULE 16.4 FIRST PRE-TRIAL CONFERENCE

The Court will set a First Pretrial Conference approximately 90 days after the complaint is filed. The date designated may be changed only upon order of the Court.

At the First Pretrial Conference the Court will set dates for the appraisal exchange, a 7-month status conference, a mandatory settlement conference, a trial readiness conference, and a trial date.

RULE 16.5 PROCEDURE FOR EXCHANGE OF EXPERT LISTS AND APPRAISALS

Pursuant to Code of Civil Procedure § 1258.300, the Los Angeles Superior Court has adopted rules for exchange of expert lists and appraisals in lieu of the procedures set forth in Code of Civil Procedure §§ 1258.210–1258.290.

Parties are not required to file a formal demand for exchange of expert lists and appraisals as provided for in Code of Civil Procedure § 1258.210. The Court will set a date for the exchange.

RULE 16.6 DATE FOR EXCHANGE OF EXPERT LISTS AND APPRAISALS

At the First Pretrial Conference the Court will set the date for the simultaneous exchange of expert witness lists and appraisals [statements of valuation]. The date of exchange will be no sooner than 9 months after the complaint is filed and will be at least 90 days prior to trial, unless the Court orders otherwise for good cause shown.

By stipulation, the parties may agree to exchange expert lists and appraisals outside of court.

RULE 16.7 CONTENT OF EXPERT WITNESS LIST

The list of expert witnesses shall include the name, business or residence address, and business, occupation, or profession of each person intended to be called as an expert witness by the party, and a statement of the subject matter to which his or her testimony relates.

RULE 16.8 WHEN AN APPRAISAL EXCHANGE IS REQUIRED

A party shall exchange an appraisal for each person, including an owner of a property, who the party intends to call as a witness to offer an opinion on any of the following matters:

- (a) The value of the property being taken;
- (b) The amount of the damage, if any, to the remainder of the larger parcel from which such property is taken;
- (c) The amount of the benefit, if any, to the remainder of the larger parcel from which such property is taken;
- (d) The amount of any other compensation, including business goodwill and fixtures and equipment, which is required to be paid by Chapter 9 (Code of Civil Procedure §1263.010 et. seq.) or Chapter 10 (Code of Civil Procedure §1265.010 et. seq.) of the Eminent Domain Law.

RULE 16.9 REQUIRED CONTENTS OF APPRAISALS

Appraisals exchanged shall contain the information set forth in Appendix A hereto, to the extent relevant to the valuation opinion.

In addition, the appraisal should include an opinion and summary of the extent to which, if any, the conclusion of value is affected by the presence of contamination or other conditions in, on, or under the property being condemned.

RULE 16.10 AMENDMENT OF EXPERT LISTS AND APPRAISALS AFTER EXCHANGE

A party who wishes to amend their list of expert witnesses or appraisals after the simultaneous exchange must bring a noticed motion for leave of court to make the amendment. The motion must include the proposed amended expert list or appraisal. The content of a proposed amended appraisal should comply with rule 16.9. In determining whether to permit the amendment the Court should consider the following factors:

- (1.) Whether the party offering the witness would not in the exercise of reasonable diligence have determined to call such witness, or discovered or listed such opinion or data, by the exchange date;
- (2.) Whether the party offering the witness failed to determine to call such witness, or to discover or list such opinion or data, through mistake, inadvertence, surprise, or excusable neglect;
- (3.) The extent to which the opposing party has relied upon the list of expert witnesses and the appraisal opinion and data, and will be prejudiced if the witness is called or the testimony concerning such opinion or data is given.

RULE 16.11 EXCLUSION OF WITNESSES OR TESTIMONY FOR FAILURE TO PROPERLY EXCHANGE EXPERT LISTS AND APPRAISALS

If a party fails to make a proper exchange of expert lists, appraisal, or appraisal data as required by these rules, any affected party may move to exclude the witness, or all or part of the testimony of that witness, from testifying on direct examination during the case-in-chief of the party offering the witness.

At the hearing on the motion to exclude the Court may, in its discretion and upon such terms as may be just, permit a party to call a witness, or permit a witness to testify on direct examination to an opinion or data, for which there was not a proper exchange. In

making that determination the Court should consider the following factors:

- (1.) Whether the party offering the witness would not in the exercise of reasonable diligence have determined to call such witness, or discovered or listed such opinion or data, by the exchange date;
- (2.) Whether the party offering the witness failed to determine to call such witness, or to discover or list such opinion or data, through mistake, inadvertence, surprise, or excusable neglect;
- (3.) The extent to which the opposing party has relied upon the list of expert witnesses and the appraisal opinion and data, and will be prejudiced if the witness is called or the testimony concerning such opinion or data is given.

RULE 16.12 MANDATORY SETTLEMENT CONFERENCE

The Court will hold a mandatory settlement conference [MSC] in each case before trial. The settlement conference shall be scheduled a sufficient time after the exchange of appraisals to allow the parties to conduct expert depositions and engage in settlement discussions.

All counsel, all parties with settlement authority, and all parties *in pro per* must attend the MSC in person unless prior arrangements have been made with the Court for a party to appear by telephone.

RULE 16.13 FINAL OFFER AND FINAL DEMAND

Pursuant to Code of Civil Procedure section 1250.410, at least twenty (20) days prior to the date of trial plaintiff shall file with the Court and serve on the defendant[s] its final offer for the property sought to be condemned, and defendant shall file with the Court and serve on the plaintiff its final demand.

In the alternative, the parties may stipulate that compliance with the requirements of Code of Civil Procedure section 1250.410 may be satisfied by exchanging and filing final offers and demands at the conclusion of the Mandatory Settlement Conference.

APPENDIX A REQUIREMENTS FOR APPRAISALS

The appraisal report shall include clear and concise statements of the following to the extent the opinion is based on them:

1. A description of the property including, as a minimum, a plot plan (not necessarily to scale) showing the size, shape, dimensions of the property being acquired and its location to street accesses. Additional information relating to terrain, utilities, principal street accesses, location of improvements upon the property, and the relationship of the property to and description of a larger parcel of which it is a part, when appropriate, must also be supplied if necessary for understanding of the appraisal problem;
2. Present zoning of the property, and, if the existing use is inconsistent with the present zoning, the authority by which such use is permitted;
3. A statement of the appraiser's opinion of the highest and best use of the property. If such use is inconsistent with the present zoning, a concise statement of factual matters, including other zone changes or changes of use in the neighborhood and/or the names and addresses of any experts on zoning and/or zoning officials upon which the opinion of probate zone change was predicated;
4. The appraiser's opinion of the market value of the property being acquired and, if the property is part of a larger parcel, his or her opinion of severance damage, if any, and special benefits, if any, to the remainder, together with methods of calculations and reasons for said damages and/or benefits;
5. When included as issues in the case, the appraiser's opinion of precondemnation damages, if any, and the value of loss of business goodwill, if any, together with the methods of calculations and reasons for said damages and value. If the appraiser is of the opinion that there are no severance or precondemnation damages or special benefits or value of loss of business goodwill, a statement to this effect should be included, together with reasons therefore.

6. The valuation approaches or methods utilized in the formation of the appraiser's opinion should be set forth in a brief statement, together with a statement as to the approach or approaches most relied upon by the appraiser in reaching his ultimate opinion. If any approach or method is not specified, it shall be presumed that the appraiser did not consider it in arriving at his opinion;

7. Where market data or sales are utilized, the following information as to each sale:

A. Location (legal description and address, if available, or other sufficient designation for identification);

B. Total area and shape of property;

C. Topography;

D. Zoning;

E. Nature and brief description of improvements, if any;

F. Date of sale (close of escrow date preferred to the recording date);

G. Names of buyer and seller;

H. With whom and date the sale was verified and their connection, if any, with the sale property;

I. Total sales price;

J. Unit price paid, if unimproved (per acre, per square foot);

K. Terms of sale;

L. How the sale compares with the opinion of value of the subject property or remainder;

M. If the appraiser uses "before" and "after" sales or sales with different zoning than subject property, he or she must designate for what purpose the sale was used.

8. If reproduction cost studies are made, the following information must be submitted:

A. Description of improvements;

B. Size and area of building or structure;

C. Type of construction;

D. Age of building or structure;

E. Condition of building or structure, including obsolescence and depreciation;

F. Remaining economic life of improvements;

G. Cost factor or other computation used to establish cost to replace improvements;

H. Depreciation allowance used and basis therefor;

9. If a capitalization or other income study is made, the following minimum information should be included, where relevant:

A. Gross income utilized in computations and whether actual income being produced or assumed income is used and the basis therefor;

B. Enumeration of expense items expected, the respective amounts thereof and whether said amounts are based upon actual or assumed expenses;

C. Method of processing or treating income;

D. Capitalization rate or rates or multiplier used;

E. If the recapture of improvements is provided for (land residual method), a statement of the remaining economic life of improvements used and rate of capitalization applied to residual land;

F. If the annuity method is used, a statement of the anticipated economic period in which payments are expected and the discount rate used, and the residual value of the land adopted in the study. The valuation indicated by said method or methods;

10. Where lease information is utilized, the following information as to each lease:

A. Location and address;

B. Total area and shape of property;

C. Topography;

D. Zoning;

E. Nature and brief description of improvements;

F. Date of lease;

G. Names of lessor and lessee;

H. With whom and date lease was verified and their connection, if any, with the leasehold property;

I. Terms of lease;

J. How the lease compares with the opinion of the value of the lease of the subject property pursuant to Evidence Code section 817, or the opinion of the capitalized value of the reasonable net rental value of the subject property, pursuant to Evidence Code section 818.

11. Where precondemnation damages are alleged, the following information should be included, where relevant:

A. Dates when damages began and ended;

B. Type of damages;

C. Cause of damages;

D. Amount of damages;

E. Methods of determining damages and calculations and reasons therefor.

12. Where loss of business goodwill is alleged, the following information should be included, where relevant:

A. Average gross earnings;

B. Average net earnings;

C. Percentage estimate of average net earnings as an allowance on the average of net tangible assets;

D. Deduction of said allowance from the average net earnings to determine excess attributable to intangible assets;

E. Capitalization of (D) at a certain fixed rate to determine the saleable value of the goodwill;

F. Any other methods, formulae or basis for determining the loss of business goodwill, including calculations and valuation conclusions.

13. The appraisal report shall contain separate summaries of the following data wherever applicable:

A. Summary of value conclusions, including the value of each parcel taken; amount of severance damages, if any; special benefits, if any; precondemnation damages, if any; loss of business goodwill, if any;

B. Summary of the basic data regarding the subject property as to size, shape, topography, location, zoning, nature, description of improvements, if any;

C. Summary of all market sales used by the appraiser in support of the opinion of value in the market sales approach to valuation;

D. Summary of the income capitalization study, if any;

E. Summary of the depreciated reproduction cost study, if any;

F. Summary of the appraiser's educational background, working experience, particularly as it relates to real property and appraisal of real property, affiliations with professional organizations, previous clients and other information intended to establish the appraiser's qualifications pursuant to Evidence Code section 801.