

Dear Colleagues, Clients and Friends of the Firm,

Welcome to another issue of **Eminent Domain Plus+**.

Our mission is to deliver information that you find relevant, interesting and helpful.

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## Amendments to the Texas Rules of Civil Procedure

On December 23, 2020, the Texas Supreme Court issued an order of Final Approval of Amendments to Texas Rules of Civil Procedure 47, 99, 169, 190, 192, 194, 195, 196, 197 and 198. These amendments apply to cases filed on or after January 1, 2021. Several of these Rule changes will affect condemnation cases filed in Texas state courts.

As an initial matter, Rule 47 now includes a pleading provision for cases involving “only non-monetary relief.” Prior to this amendment, condemning authorities would often allege in their condemnation petitions that they were seeking “monetary relief of \$100,000 or less and non-monetary relief.” Of course, condemnors are required *to pay* just compensation for their takings – not receive payment. Condemnors justified making this pleading allegation because it tracked the wording of the prior Rule 47 which did not have a category that fit condemnation cases. In our experience, allegations that condemning authorities are seeking “monetary relief of \$100,000 or less” confused and troubled many unrepresented landowners and likely resulted in some landowners prematurely settling condemnation cases. We hope that amended Rule 47 will now eliminate this issue.

In addition, Rule 194 now requires initial disclosures. In particular, a party must now make the initial disclosures without waiting for a discovery request. The practical effect of this amendment is that the required disclosures will trigger the discovery period, and thus, the new expert designation deadlines of Rule 195.2, which are tied to the end of the discovery period. Accordingly, landowners and their counsel must be cautious in correctly calculating the discovery period and expert designation deadlines early in the case and cannot wait for the parties to enter a scheduling order to calendar expert deadlines. This will likely make cases more expensive for landowners as experts will need to be involved earlier in the post-hearing proceeding.

Rule 195 as amended will have an important impact on condemnation cases. Rule 195 now requires experts to disclose a list of all other cases in which, during the previous four years, the expert testified as an expert at trial or by deposition. Because of this Rule change, we have asked our expert witnesses to create a system to track trial and deposition testimony and to gather the required information for the prior four years. Notably, the amended Rule does not speak to testimony at special commissioners’ hearings. We would argue that experts are not required to list testimony at special commissioners’ hearings. However, this may be a gray area and some condemning authority will likely take the position that special commissioners hearing testimony must be disclosed as well, dubbing it “trial testimony.”

There is one potential positive change to Rule 195 concerning privileged communications. In particular, Rule 195(c) now provides that, subject to a few exceptions, communications between a party’s attorneys and testifying expert witness are protected from discovery. In addition, Rule 195(d) now provides that a draft expert report is protected from discovery. These changes will allow more open communication between the landowner, their attorneys and their testifying experts. While such communication is valuable for landowners, as landowners often know important facts about the subject property or are privy to sales data that is not readily available due to Texas’ status as a non-disclosure state, it is a rule that can be used to pressure experts without fear of discovery. While we have always respected the independence of any of the experts that we utilize in condemnation cases, it is our sincere hope that parties do not abuse this amended Rule to pressure or weigh in on the testimony and opinions of their retained experts.

Here are the [new Rules](#). While there are numerous other changes to the Texas Rules of Civil Procedure, this summary above focuses on changes we see impacting condemnation cases in Texas.

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**Webinar with Jim Spivey and Texas Farm Bureau**

We are excited to provide you the link to Jim's Webinar with the Texas Farm Bureau where the topic was "Eminent Domain: Negotiating a Fair Deal." Moderated by Firm Friend, Tiffany Dowell Lashmet and Jim Spivey, this Webinar was well attended and chock full of great landowner questions. Click [here](#) to watch the webinar.



**Congratulations to Jim Spivey!**

Jim has once again been honored by **Best Lawyers** in the field of Commercial Ligation. Jim has been honored in this category since the 16<sup>th</sup> edition (2010) consecutively to the 27<sup>th</sup> edition (2021).



**Soledad Valenciano Joins LEAD Steering Committee**

Soledad Valenciano has joined the Bexar County Women's Bar Foundation's LEAD Academy's Steering Committee. The LEAD Academy is focused on empowering women attorneys to develop their leadership potential and build robust industry connections. Learn more [here](#).



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This document is intended to provide general information about legal matters of current interest. This document is not intended as legal advice applicable to specific facts and circumstances, nor does it create any attorney-client relationship between any reader and SPIVEY VALENCIANO, PLLC. Readers should not act upon the information contained in this document without professional counsel.

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### **About SPIVEY VALENCIANO, PLLC**

SPIVEY VALENCIANO, PLLC is a litigation boutique that represents property owners across the the State of Texas in complex eminent domain matters. The firm also represents property owners with significant holdings or affiliated property owners in contested PUC electric transmission line routing cases (CCN Applications). The firm also represents clients in select litigation matters and is frequently engaged to serve as trial co-counsel in pending jury trials. The firm provides complimentary case reviews for prospective eminent domain clients, which may be scheduled by contacting Jim or Soledad via email.

For more information, visit [SPIVEY VALENCIANO, PLLC](#).

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