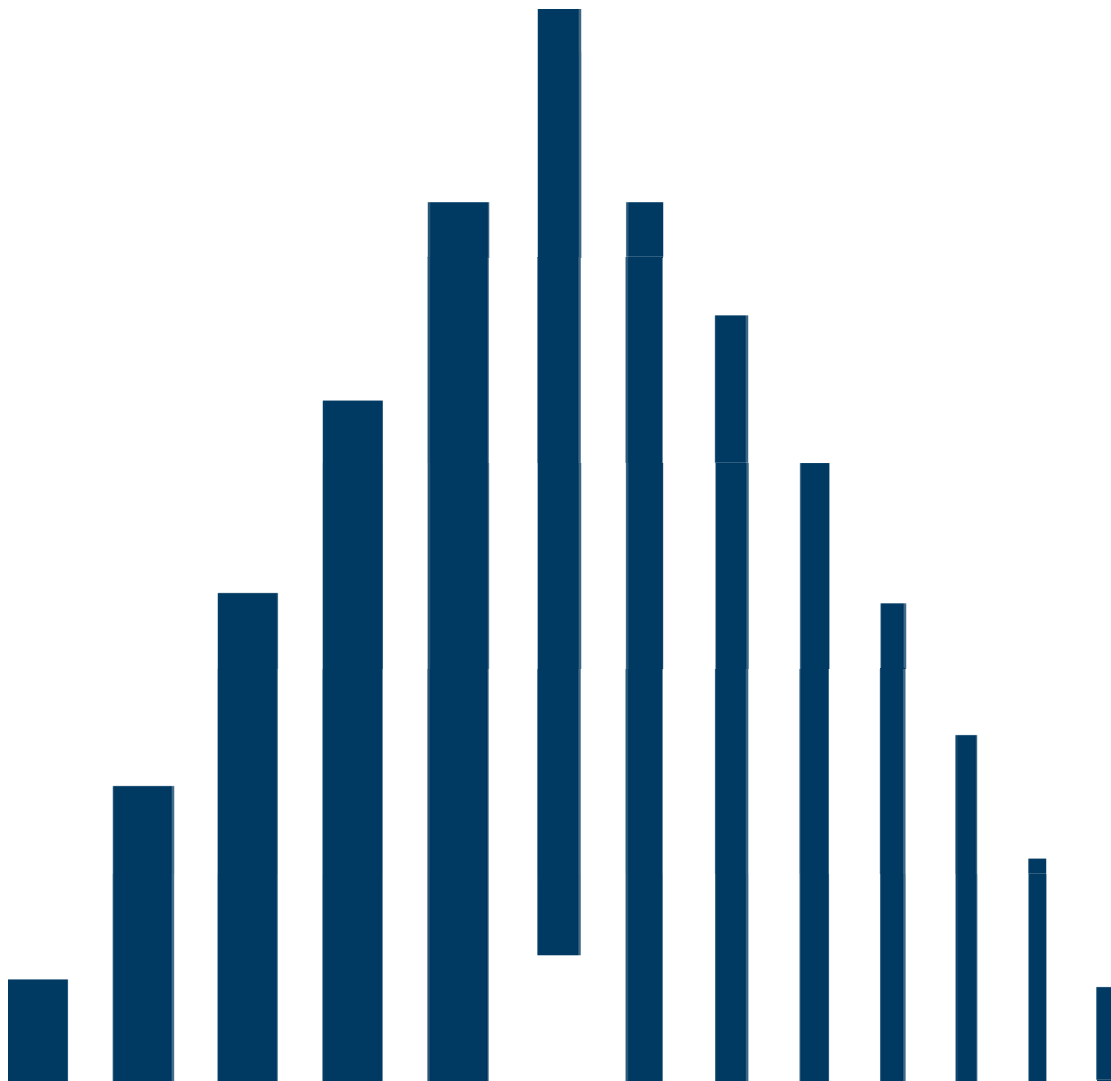


Welcome



Expert Witness

Rule 26 of the
Federal Rules
of Civil
Procedure

Disclosure of Expert Testimony- 26(a)(2)(B)

(B) Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness. The report shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the study and testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

Disclosure of Expert Testimony- 26(a)(2)(B)

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Disclosure of Expert Testimony- 26(a)(1)

a) Required Disclosures.

(1) Initial Disclosures.

(A) *In General.* 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:

- (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information — along with the subjects of that information — that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
- (ii) a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

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DEFINITIONS

Report

Any communication, written or oral, of an appraisal, appraisal review, appraisal consulting, or real property consulting service that is transmitted to a client.

Does NOT allow for the existence of Draft Reports

DEFINITIONS

Report

Any communication, written or oral, of an appraisal, appraisal review, appraisal consulting service that is transmitted to the client upon completion of an assignment.

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IMMINENT CHANGES

- **RULE 26**
- **USPAP**

IMMINENT CHANGES

- **RULE 26**

Amendments to Rule 26 - Discovery Scope and Limits.

Expected to be effective December 1, 2010

(4) Trial Preparation: Experts.

(B) *Trial Preparation Protection for Draft reports or Disclosures.* Rules 26(b)(3)(A) and (B) protect draft reports of any report or disclosure required under Rule 26(a)(2), regardless of the form of the draft.

(C) *Trial Preparation Protection for Communications Between Party's Attorney and Expert Witnesses.* Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26 (a)(2)(B), regardless of the form of the communication, except to the extent that the communications:

- i. Relate to compensation for the expert's study or testimony;
- ii. Identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed, or
- iii. Identify assumptions that the party's attorney provided and that the expert relied upon in forming the opinions to be expressed.

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IMMINENT CHANGES

- **USPAP**

USPAP

Expected to be effective January 1, 2012

REPORT:

any communication, written or oral, of assignment results for an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client or any other intended user, at any time.

USPAP

Expected to be effective January 1, 2012

REPORT:

any communication, written or oral, of assignment results for an appraisal, appraisal review, or appraisal consulting service that is transmitted to the client or any other intended user, at any time.

Assignment results include any “opinions or conclusions developed specific to an assignment.”

Does NOT allow for the existence of Draft Reports

Expected to be effective January 1, 2012

COMMUNICATIONS RULE:

When communicating with clients, other intended users, or any other party or entity related to appraisal practice, an appraiser must do so in a manner that is meaningful and not misleading. This COMMUNICATION RULE applies to communication by an appraiser throughout all stages of a service provided as part of an assignment, including:

- Assignment results; and
- Appraiser's other opinions.

Does NOT allow for the existence of Draft Reports

Expected to be effective January 1, 2012

COMMUNICATIONS RULE

Comment:

“Some appraisers have claimed that communication of opinions and conclusions transmitted prior to the completion of an assignment does not require compliance with USPAP because it is not, by definition, a report. In worst case scenarios, appraisers have attempted to avoid responsibility for communications of all or part of the assignment results by claiming that the communication is a draft and should not be subject to enforcement. Such avoidance of responsibility is clearly contrary to public trust.”

Does NOT allow for the existence of Draft Reports

SUMMARY OF CHANGES

Rule 26 - RULES OF CIVIL PROCEDURE:

Moving towards greater confidentiality and efficiency

Change Based on Two Recognitions:

“Experts retained by a party are *partisan* witnesses”

There exists “a professional expert witness industry.”

SUMMARY OF CHANGES

USPAP:

Moving towards greater transparency but less efficiency

Change Premised on the Goal:

“to promote and maintain a high level of public trust in appraisal practice”

Goodbye

