

## Anatomy of a Property Tax Assessment Case

We will outline the origin, form, and function of each step in a property tax assessment case. We will spend extra time on the discovery step to explore accessing salient data effectively. Federal Rules of Civil Procedure and Federal Rules of Evidence are used as reference for discussion with some specific state law distinctions included when relevant.

The Federal Rules of Civil Procedure (FRCP) are the procedural rules governing civil lawsuits in U.S. federal courts, adopted in 1938 to unify federal practice and ensure fair, fast, and inexpensive resolution of cases. Key aspects include rules for initiating lawsuits (filing a complaint, Rule 3), serving process (Rule 4), defining pleadings and motions (Rule 7, Rule 8), conducting discovery (Rules 26-37), managing trials (Rules 38-56), and post-trial procedures. The rules are intended to provide a standardized framework for litigation and are enforced by the courts to achieve their core principles.

The Federal Rules of Evidence (FRE) center on the principles of relevance, competency, and fairness, ensuring that only admissible evidence is presented to a fact-finder. Key elements include that evidence must be relevant to a disputed fact\*, authenticated, and generally not hearsay. Even relevant evidence may be excluded if its probative value is outweighed by dangers of prejudice, confusion, or delay, and rules like the Best Evidence Rule and rules on privilege also govern admissibility.

### 1. **Conditions Precedent: Federal Rule of Civil Procedure 9(c) (hereinafter FRCP)**

In other words, how did we get here?

[Initial discussions (conditions precedent to our conditions precedent discussion): criminal versus civil procedure; type of review requested – de novo or certiorari; parties]

**Origin (includes FRCP 7):** The plaintiff (property owner) must state in the complaint (formal document required to start a civil lawsuit; notice pleading) the facts, parties, legal claims, and relief being sought. Taken together, these are the conditions precedent to file a claim.

It is filed with the Clerk of Court, a fee is paid, and the court then issues a summons that notifies the defendant (taxing jurisdiction/assessor) of the lawsuit. The defendant must then respond, typically by filing an answer (further discussed later).

**Form:** Under the Federal Rules, it is sufficient to generally allege that all conditions precedent have been met by the property owner. However, if the defendant denies that a condition precedent occurred, they must do so with specific particularity.

**Function:** To ensure that parties understand the facts underlying the complaint with deadlines and notices. Additionally, to ensure that all requirements are met to enable filing of the complaint.

**Potential Conditions Precedent (varies by jurisdiction):** filing an appeal with the taxing jurisdiction with inclusion of all required financial data (use Wis. Stat. § 70.47(7)(af) as an example); hearings in quasi-judicial forums (Boards of Assessors, Boards of Review), and requirements of any governmental oversight agency (e.g. state departments of revenue: Wis. Stat. § 70.85 review ) established by statute.

## 2. **Answer – Defendant (Taxing Jurisdiction/Assessor) FRCP 7, 8, 12**

- **Origin:** Admit, deny, or state lack of information: For every paragraph in the complaint, the defendant must state whether they admit the allegations, deny them, or lack enough information to admit or deny.
- **Form:** A failure to deny an allegation (except for the amount of damages) is considered an admission under FRCP 8(b)(6). Include affirmative defenses: The answer must state any legal defenses the defendant has, such as the statute of limitations or that the plaintiff failed to state a claim upon which relief can be granted.

State counterclaims and cross-claims: If the defendant has claims against the plaintiff or another party, they must be included in the answer to be considered in the lawsuit. Not typical in property tax assessment cases.

Follow the correct format: The answer should include a case caption, and it should be structured to clearly respond to each allegation.

- **Function:** Meet the deadline: Generally, an answer must be filed within 21 days of being served with the complaint, though this can be 60 days if a waiver of service is signed.

Affirmative defenses: FRCP Rule 8(c) - These are reasons the plaintiff's claim should fail for legal or procedural reasons, such as statute of limitations or accord and satisfaction. You must state all potential affirmative defenses, or the court may not allow you to use them later. Not typical in property tax assessment cases.

### 3. Scheduling orders: Pretrial Conferences FRCP Rule 16

- **Origin:** A Rule 16 scheduling order sets deadlines for a lawsuit's key stages, such as amending pleadings, completing discovery, and filing motions, controlling the case's progression.
- **Form:** They typically include specific dates or timeframes for these actions, and can also cover issues like electronically stored information (ESI), privilege, and trial management.
- **Function:** Disclosure of expert dates and discovery deadlines are of particular importance in property tax assessment cases.

### 4. Pleadings and Motions FRCP 7; Local Rules

- **Origin:**
  - Only these pleadings are allowed: (1) a complaint; (2) an answer to a complaint; (3) an answer to a counterclaim designated as a counterclaim; (4) an answer to a crossclaim; (5) a third-party complaint; (6) an answer to a third-party complaint; and (7) if the court orders one, a reply to an answer.
  - Motions: A request for a court order must be made by motion. The motion must: be in writing unless made during a hearing or trial; state with particularity the grounds for seeking the order; and state the relief sought.
- **Form:** The rules governing captions and other matters of form in pleadings apply to motions and other papers.
- **Function:** Motions to consider with specific time frames:
  - Motion to Substitute Judge - A motion to change a judge is a legal request to have a different judge assigned to a case, which can be done "as a matter of right" by filing a timely motion without a specific reason, or "for cause" by proving actual bias or conflict of interest. To proceed, you must file a written request within the deadlines set by your local or state rules, and the process requires careful adherence to court procedures.
  - Motions in Limine: A "motion in limine" is a pretrial legal request to prevent certain evidence or arguments from being presented during a trial because it is potentially prejudicial, irrelevant, or inadmissible. The Latin term means "at the threshold," and the motion is decided by a judge outside the presence of the jury to ensure a fair trial and avoid any potential harm from

inadmissible evidence. This is often more effective than waiting to object at trial, as it prevents the jury from ever hearing the information.

- Daubert Motion: A Daubert motion is a legal request to exclude an expert witness's testimony from a trial by challenging its reliability and relevance. Named after the 1993 Supreme Court case *Daubert v. Merrell Dow Pharmaceuticals*, 516 U.S. 869, it forces the judge to act as a "gatekeeper," evaluating whether the expert's methods are scientifically valid and applicable to the case before the jury hears them.

## 5. Discovery FRCP (Rules 26-37)

- **Origin:** The four main types of discovery in a civil action are depositions, interrogatories, requests for admission, and requests for production of documents. These methods are used to gather evidence and information from the opposing party before a trial.
- **Form:**
  - Admissions: A written request asking the opposing party to admit or deny the truth of specific facts or the authenticity of certain documents.
  - Interrogatories: Written questions sent to the opposing party, who must provide written answers under oath.
  - Request for Production of Documents: A request for the opposing party to produce copies of relevant documents or other tangible evidence, which can include emails, medical records, or physical items.
  - Depositions: An out-of-court, oral statement given by a witness under oath. The questions are often asked by the opposing attorney and the testimony is recorded by a court reporter. Subpoena duces tecum: is a legal order that compels a person to not only appear for a deposition but also to bring specific documents, records, or other tangible evidence with them. These can be very useful in property tax assessment cases.
- **Function:**
  - Information gathering: Assessors/Defendants use discovery to find the most accurate information possible to determine the property's fair market value.
  - Financial document requests: The assessor/defendant can request financial data, such as the property's income and expenses, to understand its performance and use the income approach to valuation. This is vital for commercial properties.

- Verifying market conditions: Discovery helps the assessor/defendant verify other market indicators and confirm that the property is being assessed at its correct market value, which is the price a typical buyer would pay.

Non-disclosure sale states: Alaska, Idaho, Kansas, Louisiana, Mississippi, Missouri (by County), Montana, New Mexico, North Dakota, Texas, Utah, and Wyoming. Discovery is critical in these states because it replaces access to information that would typically be provided in a disclosure state regarding the sales price and surrounding data. Discovery becomes an essential tool to provide the evidence needed to support/defend the final assessed value.

## 6. Settlement Considerations

- Practical considerations: terms, future significance; timing, resources
- Specific consideration for plaintiffs who file frequently and rotating cases

## 7. Trial Preparation

- Witness lists
- Exhibits
- Stipulation of facts

## 8. Trial to the Bench or Jury Trial FRCP 39

- **Origin:** Always to the Bench - No common law right: At the time the U.S. Constitution was adopted, tax collection was not a matter subject to a jury trial under common law. The Seventh Amendment right to a jury trial in civil cases applies only to "suits at common law" and has been interpreted not to extend to tax disputes.
- **Form:** Not a state requirement - The U.S. Supreme Court has not required states to provide civil jury trials under the Seventh Amendment, unlike other rights guaranteed in the Bill of Rights.
- **Function:** Expert testimony - Property valuation is generally considered a matter requiring expert testimony and administrative review rather than a determination by a lay jury.

**Briefs rather than oral arguments.** Not like tv. 😊

## 9. Witnesses – Expert Testimony Federal Rules of Evidence (FRE) 702 & FRCP 26(a)(2)

- **Origin:** Expert testimony in federal court is governed by Federal Rule of Evidence (FRE) 702, which requires that the expert be qualified by knowledge, skill, experience, training, or education, and that their testimony must be both relevant and reliable. The testimony must be based on sufficient facts or data, use reliable principles and methods, and be a reliable application of those methods to the case facts. Federal Rule of Civil Procedure (FRCP) 26(a)(2) dictates the disclosure requirements, including a written report for retained experts that details their opinions, qualifications, and compensation.
- **Form:** Disclosure (Federal Rule of Civil Procedure 26(a)(2))
  - Expert Report: For experts who are "retained or specially employed to provide expert testimony," a detailed written report is required.
  - Report Contents: The report must include a complete statement of opinions and their basis, the facts or data considered, exhibits used, the witness's qualifications (including publications from the last 10 years), and a list of other cases where the expert testified in the last four years.
  - Compensation: The report must also include a statement outlining the compensation the expert will receive for their work on the case.
  - Timing: Disclosures are typically due at least 90 days before trial, unless the court orders staggered disclosures.
  - Other Experts: The rules also specify how other experts (like treating physicians) must be disclosed, even if a full report isn't required.
- **Function:** Admissibility (FRE 702)
  - Qualifications: The witness must be qualified as an expert through knowledge, skill, experience, training, or education.
  - Relevance and Helpfulness: The testimony must help the trier of fact (the jury or judge) understand the evidence or determine a fact in issue.
  - Reliability: The testimony must be based on sufficient facts or data and be the product of reliable principles and methods.
  - Application: The expert must have reliably applied the principles and methods to the facts of the case.
  - Gatekeeping: The judge acts as a "gatekeeper" to ensure expert testimony meets these standards before it is admitted.

## 10. Evidentiary Rules – order of the trial

- **Origin:** Trial to the bench: Order of events
  - Plaintiff's case: The plaintiff presents all their evidence, including witness testimony and exhibits, to establish their claim.

- Defendant's case: The defendant then presents their evidence to disprove the plaintiff's claims and to support any affirmative defenses or counterclaims.
- **Form:** Opening and closing statements typically briefs in lieu of oral argument when a trial to the bench.
- **Function:** Judge's decision - The judge, acting as the trier of fact, considers the evidence and arguments and issues a verdict.

## 11. Trial Outcome

- How long before a decision?
- Appeal considerations: matter of law, what kind of appellate panel, request to publish considerations