#36.750 5/15/74

Memorandum 74-30

Subject: Study 36.750 - Condemnation Law and Procedure (Uniform Eminent Domain Act--Small Claims Procedure)

Background

The Special Committee drafting the Uniform Eminent Domain Code has approved an article providing an informal procedure for determining compensation in cases where the compensation for the property will be less than $20,000 or the spread between the claims of plaintiff and defendant is less than $5,000. A copy of this article of the Uniform Act is attached as Exhibit I. The article will be a part of the Uniform Act presented for adoption in August 1974 by the National Commissioners on Uniform State Laws. The New York Commission on Eminent Domain made a similar recommendation which is set out as Exhibit II attached.

Policy Question

Should we distribute for comment a tentative recommendation based on the Uniform Eminent Domain Code article? A draft of such a tentative recommendation is attached. The purpose of the distribution would be to determine whether there is support among the interested persons in California for such an informal procedure for resolution of small eminent domain claims. If a tentative recommendation is to be distributed for comment, it should be approved for distribution at the May 23-24 meeting.

Discussion

The small claims procedure developed by the Uniform Commissioners appears to be workable. It is designed to satisfy the commonly expressed need for some inexpensive means for the property owner to litigate his claim in cases

where the claim is too small to justify the expense ordinarily incurred in a court trial.

Despite the attractions of the procedure, however, there are several problems, noted below.

(1) Arbitration. California already has, to a limited extent, a procedure designed to accommodate small claims. That is the statute relating to arbitration of just compensation, enacted on Commission recommendation and recommended for inclusion in the Eminent Domain Law. However, from the Commission's questionnaires distributed within the last few years, it appears that arbitration is very rarely used. This no doubt is a result of the fact that both parties must agree before it can be used.

(2) Political climate. The primary reason that both parties must agree to the arbitration is simply that there was too much opposition from the public entities to a system whereby the defendant could force the condemnor to use a valuation system that did not necessarily follow the same evidentiary rules as in an eminent domain action and resulted in a decision that was final without the right of appeal for errors of the arbitrators. Also, the condemnor would be deprived of a right to a jury trial if forced to arbitrate on demand of the property owner.

As a practical matter, it should be recognized that, where the spread between the condemnor's offer and the property owner's demand is less than $5,000, the property owner ordinarily has no practical way to contest the taking. If he consults a lawyer, the lawyer ordinarily will tell him that the expense of trying the eminent domain case (attorney's fees and fees for expert witnesses) will be so great that it is impractical to try the case. It is unlikely that the jury would award the property owner the full amount he claims and the amount awarded over the condemnor's offer may not even be

sufficient to pay the condemnee's litigation expenses. Accordingly, since the adoption of the small claims proposal would provide a remedy to the property owner in cases where none is now available, the staff would not be surprised if it were opposed by some condemnors for that reason alone.

Another practical problem with the small claims proposal is that it could result in increased litigation. Having no practical remedy in the cases covered by the small claims proposal, the property owner is forced to settle the case at the amount offered by the condemnor and the case is never litigated. Nevertheless, this objection really is an argument that avoiding litigation in this type of case is more important than permitting litigation necessary to secure some degree of justice.

(3) Constitution. The Constitution guarantees the right to a jury trial. It may be pointed out that, since either party may appeal from the small claims judgment and have a trial de novo, the constitutional requirement is not circumvented. Nonetheless, it does place a burden on the parties to bear the expenses of two proceedings where a second is requested. For this reason, we believe only the property owner should be allowed to institute the small claims procedure.

(4) Appeals. Since both condemnors and condemnees have expressed a strong preference for jury trial, there may be some tendency by the unwilling party to appeal the judgment (request a de novo trial) in any small claims proceeding invoked by another party. However, the expense of the formal trial will be an important mitigating factor, as will the sanction for an unsuccessful effort by the condemnor to secure a better result by requesting the formal trial.

Staff Recommendation

Given the finality and lack of a right to appeal, the staff does not believe that a proposal that would compel the condemnor to submit just compensation to arbitration upon request of the property owner would have any reasonable chance of approval by the Legislature. At the same time, we believe that there is a clear need for some means for dealing with the case where the difference between the parties is relatively small. We believe that the Uniform Act proposal offers sufficient promise that a tentative recommendation based on it should be approved for distribution for comment so that the comments received can be considered when the comments on the general eminent domain statute are received.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 74-30 EXHIBIT I

ARTICLE VIII

[Informal Procedure for Disputes Involving Limited Amounts]

Prefatory Comment

This Article provides an informal procedure by which claims for compensation involving limited amounts, or involving claims with a relatively limited "spread" between the condemnor's highest offer and the property owner's lowest demand, may be determined in an inexpensive and expeditious manner. Because legal and appraisal fees often amount to a substantial proportion of the ultimate award, claims of this kind often cannot be litigated economically under normal trial procedures. As a result, either the property owner is forced to settle on the condemnor's terms or the condemnor is compelled to settle upon the basis of the "nuisance value" of the litigation. This Article provides a simplified procedure by which either party may obtain a fair hearing and determination on this kind of claim by an independent tribunal within practical fiscal limits. See also, Article XV (Arbitration).

Section 801. [Informal Claims Procedure Authorized.]

This Article applies when only the amount of compensation is in dispute and (1) the total compensation demanded by all defendants is less than [$20,000], excluding interest and costs, or (2) the difference between the latest offer of the condemnor and the latest demand by all defendants is less than [$5,000]. [The Supreme Court may adopt rules governing proceedings under this Article.]

Comment

The scope of the limited claims to which this Article applies may be adjusted by the adopting state to conform to local circumstances. The suggested alternate test (total demand of less than $20,000 or "spread" of less than $5,000) reflect a preliminary judgment that the need for informal procedure is most pressing as to compensation claims in these ranges. The dollar criteria are determined by reference to the plaintiff's "latest offer" (which may or may not be the highest one) and the defendant's current demand as of the date when the application seeking invocation of the informal procedure is filed. See Section 802. See also the definition of "compensation" in Section 103(7).

The last sentence is bracketed as an optional authorization for adopting of implementing court rules in states where existing authority to do so may be lacking.

Section 802. [Request for Informal Procedure.]

A party may file with the court a written request that the issue of compensation be determined under this Article, identifying the property, and setting forth the amount of the plaintiff's latest offer and the defendant's latest demand for compensation.

Comment

Under Section 802, a party may request use of the informal procedure by simply filing a request with the court. If a defendant claims an interest in more than one parcel of property involved in the action, he may request informal consideration as to any one of them independently of the others. No time limit for filing the request is specified; presumably, the court would deny such a request if not timely presented well before the date of trial on the issue of compensation for the property.

The simplicity of the request is intended to facilitate requests for use of this informal procedure by property owners acting in propria persona. Its contents are sufficient if they include relevant identification data and a recital of the basic fiscal facts, i.e., the compensation presently demanded by the defendant for the property and the amount of the latest offer by the condemnor. The offer and demand need not be written, since preliminary purchase negotiations, as well as settlement discussions after the action has begun, will often be oral in nature. In any event, the request itself will be, in effect, the latest offer or demand by the party submitting the request, and the opposing party may assert his latest position in response to the request, if he is unable to agree to the figure asserted.

Section 803. [Hearing.]

(a) If the court determines that the request should be granted, it shall hold a hearing upon reasonable notice to the parties to determine compensation.

(b) The court shall proceed without a jury and in an informal manner. The parties may present oral and documentary proof and may argue in support of their respective positions, but the rules of evidence need not be followed. Neither party is required to offer the opinion of an expert or to be represented by an attorney. Unless demanded by a party and at his own expense, a record of oral evidence received at the hearing need not be kept.

(c) Costs shall be claimed and taxed as in other condemnation actions. Upon entry of judgment, the clerk shall serve upon the parties a copy of the judgment with notice of its entry, together with instructions as to the procedure for demanding a retrial.

Comment

The limited claims procedure is intended to be informal; accordingly, the rules of evidence may be dispenses with. The participation of attorneys and the testimony of expert witnesses is not precluded, but is not required. The conduct of the hearing may be subject to more detailed court rules adopted under Section 801.

Section 804. [Demand for Retrial.]

(a) Either party, within 30 days after entry of the judgment, may reject the judgment and file a written demand for trial under Article IX. The action shall thereupon be restored to the docket of the court as though proceedings under this Article had not occurred.

(b) If the condemnor files a demand under Subsection (a) and ultimately obtains a judgment no more favorable to him, the court may require him to pay, in addition to costs, the defendant's litigation

expenses incurred after the demand was filed.

Comment

Under Section 804, either party may reject the judgment in a limited claim proceeding and demand a trial de novo under normal plenary procedure. If a timely demand is filed, the case is restored to the court's docket, with the same status as when the request for informal proceedings was filed under Section 802. Thus, for example, the issue of the amount of compensation will be triable by jury, upon the retrial, on the same terms as in other condemnation actions. While this approach may necessitate a duplication of effort in some cases, experience in jurisdictions having a similar procedure reportedly indicates that few actual retrials are sought. See New York State Commission on Eminent Domain, 1971 Report, p. 36.

Subsection (b) authorizes the court to require the condemnor to pay the litigation expenses subsequently incurred by the defendant if the condemnor demands a retrial and fails to secure a more favorable determination of the issue of compensation. The possibility that the court may impose this sanction is intended to deter the condemnor from filing a demand for retrial except in cases in which the judgment appears to be grossly erroneous. The term, "litigation expenses," includes reasonable attorney, appraisal, and engineering fees. See Section 103(17).

16. An optional small claims procedure should be established for State and non-State appropriation claims in which the formal elements of proof demanded in a normal trial of an appropriation case would be relaxed. A small claim is defined as a claim where the total demand is Fifty thousand dollars or less and the difference between the offer of the condemnor and the condemnee's demand is Five thousand dollars or less.

DISCUSSION

At the present time there is no procedure in New York for the resolution of small claims except through the procedures established for the trial of all claims, the Condemnation Law, Court of Claims Act or, where applicable, a local administrative code.

The Commission received a great number of proposals suggesting that a small claims procedure be established.[137] The idea is that this procedure would enable property owners to seek some determination, other than that by the agency with which he is negotiating, of the value of his claim. Specific examples were given to the Commission which illustrated that a claim for damages which is less than three or five thousand dollars in excess of the offer is uneconomical to try under normal trial procedure, since legal and appraisal fees will take too large a portion of the eventual award. Thus, the property owner is forced to settle at the condemnor's offer.

The condemnee's bitterness of being placed in such a situation, with no apparent relief, was all too evident at the Commission's hearings. Appraisers and attorneys also spoke of this problem, and referred to the fact that economic considerations result in fees taking a large percentage of the award on small claims (often over 50%). Participants pleaded for the need for an alternative procedure in order to restore public confidence and a genuine belief that the system was meant to be fair, and "just compensation" an obtainable goal.

The procedure for handling small claims recommended by the Commission should encourage condemnees to feel that they can obtain a fair hearing within their budgetary limitations. Other jurisdictions are adopting such procedures. California has recently enacted a statute for the arbitration of condemnation claims. This legislation was sponsored by a 1969 report of the California Law Revision Commission.[138] In its report the Commission found that the jury trials used in condemnations are slow, expensive and a burden to the courts. Further, attorneys advised that Commission that disputed value differences of less than Five thousand dollars result in unrecoverable costs and expenses so that attorneys normally decline to represent property owners in such cases.

The California Law Revision Commission felt that arbitration would offer the owner the only practical alternative to accepting the condemnor's final offer.

The California statute provides for voluntary arbitration; the parties must agree to use arbitration. The expenses of this proceeding shall be paid by the condemnor with the exception of claimant's attorney's fees and expert witnesses fees. Nevertheless, by agreement the condemnor may agree to pay claimant's costs and, if so, these costs shall be set by the arbitrator. The use of arbitration may come prior to the commencement of the condemnation proceeding. The condemnor may still abandon the acquisition proceeding as allowed by California law unless in the agreement to arbitrate it waives this right. If there is an abandonment, the condemnor pays all of the condemnee's costs. These arbitration agreements may be recorded and are then effective notice for a period of two years.

Other details of the arbitration procedure are covered by California's general arbitration statute.

The American Arbitration Association as of June 1, 1968, established Eminent Domain Arbitration Rules. The rules provide that an agreement will be entered into providing for arbitration. The matter shall be submitted to three (3) arbitrators selected from AAA panels. The parties shall be limited to no more than two appraisals and five photpgraphs for use as exhibits. The condemnor shall furnish maps, surveys, project plans and other information. The arbitrators must make an award within fourteen days after the closing of the hearing. The award must be within the range of evidence presented to the arbitrator.

The rules reserve to the condemnor the right to abandon the acquisition provided it pays to the condemnee his expenses and all other arbitration expenses. The arbitrator shall determine the reasonableness of these expenses.

Pennsylvania's Eminent Domain Code provides for a procedure that is

analogous to a small claims court.[139] The condemnee or condemnor is allowed to petition for the appointment of viewers to ascertain just compensation. The viewers are appointed by the court to determine damages. Thereafter a hearing will be held by the viewers. The condemnor must furnish its plans to the viewers. An appeal from the report of the viewers must be made within thirty days after receipt of their report. The appeal is to the appointing Court of Common Pleas. If appealed, the matter is heard de novo by either the court or a jury.[140]

The recommendations of this Commission will mean that under the aegis of the court, in an informal atmosphere, the owner can present information that he feels reflects a higher value than the amount of the offer. If attorneys and appraisers are retained by the property owner, they will not be faced with stringent rules of evidence as required at a normal trial and their fees could be reduced in some instances, allowing a greater percentage of the award to end up in the owner's pocket.

Participants at the hearings stated that it was uneconomical for a condemnee to litigate a claim where the "spread" between the offer and demand was less than three to five thousand dollars. In establishing criteria to qualify as a "small claim" the Commission adopted the higher amount and defines a small claim to refer to situations where the total demand is less than Fifty thousand dollars and the difference between the demand and offer is not greater than Five thousand dollars.

Will this place too great a burden on the courts? Some increase in litigation is obviously anticipated, but it is felt that this burden is one that must be paid if public confidence is to be maintained in the eminent domain procedure.

The decision at a small claims' hearing is not binding. An appeal in the form of a trial de novo at a regular trial term is provided. However, studies of small claims procedures in other areas show a very small percentage of appeals.[141]

138. Annual Report, California Law Revision Commission, Dec. 1909 Appendix II.

139. Act of June 22, 1964 (P.L. 84) Sec. 502.

140. Act of June 22, 1964, (P.L. 84) Sec. 515.

141. Realism in Rochester: The Pilot Arbitration Program, J. King 43 N.Y.S. Bar Journal 498. Under the experimental program an appeal from an arbitration award in the form of a demand for a trial de novo is allowed. 93.5% of the cases arbitrated have not been appealed.

405-434

TENTATIVE RECOMMENDATION

relating to

Informal Procedure for Disputes Involving Limited Amounts

The Law Revision Commission has long been concerned with providing a practical method whereby the owner of property taken for public use can obtain an impartial review of the condemnor's offer in a case where the property is of relatively low value or where the spread between the claims of the condemnor and the property owner is small. The Commission recognizes that it ordinarily is uneconomical to try a case under normal trial procedures where the claim for compensation is less than $5,000 in excess of the condemnor's offer or where the property involved is worth less than $20,000; legal and appraisal fees will take all or a major portion of the amount by which the award exceeds the condemnor's offer. Thus, the property owner usually is forced to settle at the condemnor's offer.

In 1970, as a result of a Commission recommendation,[1] Chapter 3 (commencing with Section 1273.01) was added to the eminent domain title of the Code of Civil Procedure to authorize the use of arbitration to determine just compensation for property sought to be acquired for public use. The Commission was hopeful that public entities and other condemnors would use arbitration, at least on an experimental basis, as an alternative to judicial proceedings. However, several surveys made by the Commission reveal that arbitration is not being used to any significant extent in eminent domain cases. The Commission has considered whether the condemnor should be required to arbitrate just compensation upon demand of the property owner and has considered other means that might be used to force condemnors to submit just compensation to arbitration in appropriate cases. The Commission has decided

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1. Recommendation Relating to Arbitration of Just Compensation, 9 Cal. L. Revision Comm'n Reports 123 (1969).

to recommend no substantive change in the existing arbitration statute. There are two reasons for this conclusion. First, an arbitration proceeding does not necessarily follow the same evidentiary rules as an ordinary eminent domain trial, but the arbitrator's decision, absent fraud, is final. Second, the condemnor would be deprived of a right to a jury trial if forced to arbitrate on demand of the property owner. Thus, despite the desirability of permitting arbitration where both the property owner and the condemnor agree, the Commission is not persuaded that it would be good public policy to make arbitration mandatory without consent of the condemnor.

Nevertheless, the Commission recognizes the continuing need for some informal procedure for the disposition of disputes involving limited amounts.[2] A special committee of the National Commissioners on Uniform State Laws has prepared a tentative draft of a Uniform Eminent Domain Code which it plans to present during the summer of 1974 to the National Commissioners for adoption. The Uniform Code includes an article providing an informal procedure for disputes involving limited amounts.[3] The Commission has concluded that such a procedure offers promise of providing a practical, inexpensive means for the property owner to litigate his claim in cases where the claim is too small to justify the expense ordinarily incurred in a court trial.

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2. A New York Commission on Eminent Domain, created to recommend reform in New York eminent domain law, reached a similar conclusion. See 1971 Report of the State Commission on Eminent Domain 34-36 (1972).

3. The procedure under the Uniform Code can be briefly summarized as follows: Where the total compensation demanded by all defendants is less than $20,000, or where the difference between the offer of the condemnor and the demand of the defendants is less than $5,000, upon request of a party, the court may proceed informally without a jury to determine the amount of just compensation. The rules of evidence need not be followed, experts are not required, and a party need not be represented by an attorney. Judgment is entered for the amount determined by the court. Either party, within 30 days after entry of the judgment, may reject the judgment and file a written demand for trial as in other eminent domain proceedings and, in such case, the case is tried as if the informal procedure had not occurred. If the condemnor rejects the judgment obtained under the informal procedure and demands a regular trial and ultimately obtains a judgment no more favorable to him, the court may require him to pay, in addition to costs, the defendant's litigation expenses (including reasonable attorney, appraisal, and engineering fees) incuured after the demand was filed.

The Commission therefore recommends the enactment of statutory provisions, based on the Uniform Code provisions, to provide an informal procedure for disputes involving limited amounts. Specifically, the Commission recommends the following procedure:

1. The informal procedure should be authorized for use when only the amount of compensation is in dispute and (1) the total compensation demanded by all defendants is less than $20,000, excluding interest and costs, or (2) the difference between the amount offered by the condemnor and the amount demanded by the property owner is less than $5,000.

2. The informal procedure should be authorized only where the property owner makes a written request and the granting of such a request should be left to the discretion of the court in which the eminent domain proceeding is pending.

3. If the request is granted, the court would hold an informal hearing without a jury to determine compensation. The parties would be permitted to present oral and documentary proof and to argue in support of their respective positions, but there would be no requirement that the rules of evidence be followed. Neither experts nor attorneys would be required, but a party could present an expert and have an attorney if he so desired. Unless demanded by a party and at his own expense, a record of oral evidence received at the hearing would not be kept.

4. After entry of the judgment resulting from the informal proceeding, either party would have 30 days within which to reject the judgment and file a written demand that the issue of compensation be tried de novo as in an ordinary eminent domain proceeding. The retrial would then take place as if the informal proceeding had not occurred.

5. If the plaintiff rejects the judgment and demands a retrial and ultimately obtains a judgment no more favorable to it, the court would be authorized, in its discretion, to require plaintiff to pay, in addition to costs, the defendant's litigation expenses incurred after the demand was filed. For this purpose, "litigation expenses" would include attorney's fees, appraisal fees, and fees for the services of other experts where such fees were reasonably and necessarily incurred to protect the defendant's interests in the eminent domain proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings.

Although either party could reject the judgment and have the issue of compensation tried as in an ordinary eminent domain case, the Commission anticipates that few of the informally obtained judgments will be rejected and the matter retried. As a practical matter, the amount involved ordinarily will not be sufficient to justify the property owner incurring the expenses that would be required by an ordinary trial, so it is unlikely that he will reject the judgment. And the requirement that the plaintiff obtain a more favorable result on the retrial or run the risk of having to pay the defendant's litigation expenses should discourage rejection of the informally obtained judgment by the plaintiff other than in cases where the judgment appears to be grossly erroneous.

The Commission's recommendation would be effectuated by enactment of the following statutory provisions:[4]

CHAPTER 13. INFORMAL PROCEDURE FOR DETERMINING COMPENSATION

§ 1274.010. Informal claims procedure authorized

1274.010. This chapter applies when only the amount of compensation is in dispute and (1) the total compensation demanded by all defendants is less than $20,000, exclusive of interest and costs, or (2) the difference between the latest offer of the plaintiff and the latest demand by all defendants is less than $5,000.

Comment. Section 1274.010 limits use of the informal claims procedure to the cases described in the section. This permits claims for compensation involving limited amounts, or involving a relatively

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4. The statutory provisions are drafted with a view to adding a new chapter to the Eminent Domain Law tentatively recommended by the Law Revision Commission. See Tentative Recommendation Relating to Condemnation Law and Procedure: The Eminent Domain Law, 12 Cal. L. Revision Comm'n Reports 1 (1974).

limited "spread" between the condemnor's highest offer and the property owner's lowest demand, to be determined in an inexpensive and expeditious manner. Because legal and appraisal fees often amount to a substantial portion of the ultimate award, claims of this kind often cannot be litigated economically under normal trial procedures. As a result, the property owner is forced to settle on the condemnor's terms. This chapter provides a simplified procedure by which the property owner may obtain a fair hearing and determination on this kind of claim by an independent tribunal within practical fiscal limits. See also Chapter 12 (arbitration). This chapter follows closely the comparable provisions of the Uniform Eminent Domain Code.

405-438

§ 1274.020. Rules governing procedure

1274.020. The Judicial Council shall adopt rules governing the procedure under this chapter.

Comment. Section 1274.020 requires the Judicial Council to adopt rules prescribing the details of the procedure under this chapter. Also the Judicial Council will prescribe the form for the "instructions" referred to in Section 1274.040(c).

405-439

§ 1274.030. Request for informal procedure

1274.030. Any defendant may file with the court a written request that the issue of compensation be determined under this chapter. The request shall identify the property and set forth the amount of the

plaintiff's latest offer and the defendant's latest demand for compensation.

Comment. Under Section 1274.030, a defendant may request use of the informal procedure by simply filing a request with the court. If a defendant claims an interest in more than one parcel of property involved in the action, he may request informal consideration as to any one of them independently of the others. No time limit for filing the request is specified; presumably, the court would deny such a request if not presented well before the date of trial of the issue of compensation for the property.

The simplicity of the request is intended to facilitate requests for the use of this informal procedure by property owners acting in propria persona. Its contents are sufficient if they include relevant identification data and a recital of the basic fiscal facts, i.e., the compensation presently demanded by the defendant for the property and the amount of the latest offer by the plaintiff. The offer and demand need not be written since preliminary purchase negotiations, as well as settlement negotiations after the action has begun, will often be oral in nature. In any event, the request itself will be, in effect, the latest offer or demand by the party submitting the request and the opposing party may assert his latest position in regard to the request if he does not agree to the figure asserted to be his latest position in the request.

405-440

§ 1274.040. Hearing

1274.040. (a) If the court grants the request, it shall hold a hearing upon reasonable notice to the parties to determine compensation.

(b) The court shall proceed without a jury and in an informal manner. The parties may present oral and documentary proof and may

argue in support of their respective positions, but the rules of evidence need not be followed. Neither party is required to offer the opinion of an expert or to be represented by an attorney. Unless demanded by a party and at his own expense, a record of oral evidence received at the hearing need not be kept.

(c) Costs shall be claimed and taxed as in other eminent domain proceedings. Upon entry of judgment, the clerk shall serve upon the parties a copy of the judgment with notice of its entry, together with instructions as to the procedure for demanding a retrial.

Comment. Section 1274.040 makes clear the informal nature of the procedure and specifically states that the rules of evidence may be dispensed with. The participation of attorneys and the testimony of expert witnesses is not precluded but is not required. The conduct of the hearing may be subject to more detailed court rules adopted under Section 1274.020. The instructions referred to in subdivision (c) would be prepared by the Judicial Council pursuant to Section 1274.020.

405-441

§ 1274.050. Demand for retrial

1274.050. (a) Either party, within 30 days after entry of judgment, may reject the judgment and file a written demand for trial under Chapter 8 (commencing with Section 1260.010). The proceeding shall thereupon continue as though proceedings under this chapter had not occurred.

(b) If the plaintiff files a demand under subdivision (a) and ultimately obtains a judgment no more favorable to it, the court may

require it to pay, in addition to costs, the defendant's litigation expenses incurred after the demand was filed. For the purposes of this subdivision, "litigation expenses" includes reasonable attorney's fees, appraisal fees, and fees for the services of other experts where such fees were reasonably and necessarily incurred to protect the defendant's interests in the eminent domain proceeding in preparing for trial, during trial, and in any subsequent judicial proceedings.

Comment. Under Section 1274.050, either party may reject the judgment in a limited claim proceeding and demand a trial de novo under the normal eminent domain procedure. If a timely demand is filed, the case is restored to the court's docket, with the same status as when the request for the informal proceedings were filed under Section 1274.030. Thus, for example, the issue of the amount of compensation will be triable by jury, upon the retrial, on the same terms as in other condemnation actions. As a practical matter, the amount involved will not be sufficient to justify the property owner incurring the expenses that would be required by an ordinary trial. And the requirement that the plaintiff obtain a more favorable result on the retrial or run the risk of having to pay the defendant's litigation expenses should discourage rejection of the informally obtained judgment by the plaintiff.

Subdivision (b) authorizes the court to require the plaintiff to pay the litigation expenses subsequently incurred by the defendant if the plaintiff demands a retrial and fails to secure a more favorable determination of the issue of compensation. The possibility that the court may impose this sanction--a sanction that is discretionary with the court--is intended to deter the plaintiff from filing a demand for retrial except in cases in which the judgment appears to be grossly erroneous.