

**CAUSE NO. C2018-1576B**

DOUGLAS WALTER KIRK,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	COMAL COUNTY, TEXAS
	§	
COMAL APPRAISAL DISTRICT	§	
	§	
Defendant.	§	207 <sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANT’S MOTION TO ALTER DISCOVERY CONTROL PLAN**

NOW COMES the Defendant, the Comal Appraisal District, pursuant to TEX. R. CIV. P. 190.5, and moves this Court to modify the discovery plan herein to Level III discovery and set discovery deadlines. For cause of such, the Defendant shows the Court as follows:

I.

The Plaintiff (Kirk) engaged in extreme discovery abuse in this case, specifically refusing to allow in inspection of the property which he put in issue, then refusing to comply with a Court directive to allow the discovery, making wildly absurd demands for the inspection, and forcing a second hearing on the same. Kirk’s dilatory tactics needlessly prolonged the discovery process. At the eventual inspection, Kirk had multiple parties present photographing the inspectors on the subject property, often at very close range. He further engaged in passive resistance to the inspection, refusing to give any guidance to negotiating the maze that is much of the subject property. He also posted pictures of the Defendant’s retained expert in his house, a needlessly offensive intimidation tactic. Kirk has previously and since made inflammatory accusations against the Defendant, its employees and attorneys.

III.

In order to allow for complete discovery herein, the Defendant requests this Court to order Level III discovery, pursuant to Rule 109.4, 190.5, and set a discovery deadline of March 3, 2020, and Plaintiff's expert deadline of January 3, 2020, and a Defendant's expert deadline of February 3, 2020. The Defendant is in need of the additional time to counter Kirk's delays, timely report the findings of the Defendant's expert which Kirk has needlessly delayed, allow of discovery of the pictures Kirk and his associates took at the inspections, and, if necessary, to depose Kirk after the findings of Defendant's expert. Noting Kirk's other behavior herein, the Defendant can justly expect Kirk to offensively utilize the photos he and his associates took. Thus, justice demands the Defendant at least have access to the photographs. No trial has been scheduled herein.

Respectfully submitted,

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By: /s/ Kirk Swinney

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ATTORNEYS FOR DEFENDANT

**CERTIFICATE OF CONFERENCE**

I certify that attorneys at this firm have attempted to confer, with the Plaintiff in regard to the above referenced Motion to Alter Discovery Control Plan but have been unable to secure agreement.

*/s/ Kirk Swinney*

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Kirk Swinney

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing has been served by e-mail upon the Plaintiff in compliance with Rules 21 and 21a of the Texas Rules of Civil Procedure on this the 6<sup>th</sup> day of December, 2019.

Douglas Walter Kirk  
dougkirk@gvtc.com

*/s/ Kirk Swinney*

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Kirk Swinney