

# The Pretrial Process

## ■ COMMISSIONER HERBERT M. KLEIN

**T**he purpose of the pretrial conference, which involves the exchange of appraisal reports and other appraisal data, is to provide satisfaction of the discovery requirement for civil cases. In eminent domain cases outside of Los Angeles County, discovery is affected pursuant to Civil Code of Procedure, §1258.010 through §1258.300.

Therefore, if an appraiser is appearing as a witness outside of Los Angeles County, it is imperative that all local rules affecting the preparation and exchange of appraisal reports be discovered and adhered to. If there are no local rules, the procedure is controlled by §1258.010 and all relevant sections in the *Code of Civil Procedure*.

However, an appraiser should be aware of the fact that §1258.300 provides a procedure for exchange of valuation data by court rule in lieu of the legislative code requirement. The Los Angeles County Superior Court has adopted such a rule known as the *Eminent Domain Policy Memorandum*. Therefore, in Los Angeles County, the local *Eminent Domain Policy Memorandum* is controlling.

The policy memorandum includes Exhibit A, which is captioned *Requirements for Valuation Data*. A copy of Exhibit A is attached to every first pretrial conference order. The attorneys representing the parties are also expected to provide each appraiser with a copy, in order to enable the appraiser to properly prepare the appraisal report.

### Timetable

At the first pretrial conference, the parties select pretrial dates and the trial date.

---

*Herbert M. Klein has been the Los Angeles Superior Court Commissioner of the Eminent Domain Division since 1970. As Court Commissioner, Klein reviews every appraisal report submitted for trial purposes in Los Angeles. Prior to this post, Commissioner Klein was a Los Angeles Deputy City Attorney, primarily assigned to eminent domain cases. Commissioner Klein is the author of the Eminent Domain Benchbook for the Superior Court.*

The final pretrial conference date is selected far enough in advance so as to allow sufficient time for the appraiser to prepare his or her appraisal report. Sometimes the first pretrial conference takes place before the attorney or the property owner has hired an appraiser. In these cases, the attorney is simply guessing when he or she picks a date for the final pretrial conference, which is the date for the exchange of the completed written report in accordance with Exhibit A.

Sometimes the attorney or property owner has contacted the appraiser in advance of the first pretrial conference and requested a commitment as to the time it would take for the appraiser to complete the written appraisal report. Based upon the appraiser's presentations, the parties then select a final pretrial conference date. If the appraiser does not complete the report in time, the final pretrial conference date has to be continued. This usually results in the continuance also of the mandatory settlement conference date and sometimes the trial date.

Many of these continuances are opposed by the other parties, who have made calendaring commitments based upon the timetable selected in that particular case. This sometimes results in opposition to continuances by motion proceedings, which inevitably lead to additional attorney's fees and costs of suit.

### Preparation of the Appraisal Report

The Exhibit A requirements for valuation data are self-explanatory. However, certain issues regarding the preparation of the appraisal reports should be emphasized.

### Page Numbers

All pages in the appraisal report should be numbered. There used to be a practice years ago of stripping the appraisal report, particularly of redundant matter such as photographs and exhibits which were not going to be submitted as part of the appraisal presentation. Consequently, the ap-

praisers were encouraged not to number their reports so that when the report was stripped, it would not be known that the other side was in fact receiving a stripped report.

This practice of stripping the appraisal reports is less common now, and appraisers are encouraged to number the pages to facilitate the reference of particular pages during the settlement conference.

### Case Name and Number

It is required by Exhibit A to include the case name and number, as well as the parcel number, on the caption of the appraisal

The reader of the appraisal report should be able to understand how the dollar valuation conclusions were reached.

report. The correct parcel number is the number that appears on the complaint, not the assessor's rolls, unless they happen to coincide. When one appraiser uses the assessor's number, there is a question as to whether the two parcel numbers refer to the same real property.

### Severance Damages

If the appraisal includes an opinion of severance damages, a detailed description of the reasons for such damages should be included. It is not enough to say the property in the before condition is worth \$10 a square foot and in the after condition is worth \$3 a square foot. An explanation of how these amounts were arrived at must be included.

### Precondemnation Damages

Likewise, if an opinion of precondemnation damages is included in the appraisal, all reasoning and data must be explained. It is not enough to simply state a dollar figure and leave it at that.

### Valuation Approaches

The three main valuation approaches for valuing real property are the market or comparable sales approach; the cost reproduction approach; and the income approach. For valuing business goodwill, the two main approaches are the excess earning capitalization method and the market method. In either valuation analysis, if one