



# Marketing Yourself as an **EXPERT WITNESS**

## A how-to approach for expanding an appraisal practice

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For appraisers who have education, training and experience in eminent domain matters, serving as an expert witness may be an ideal way to expand an existing practice or service offerings. Attorneys retain expert witnesses to evaluate claims, write reports to settle or adjust cases, form an opinion in a case, and to testify at a deposition and/or in court to express their opinions when cases are tried or litigated. Expert witnesses are regarded as proficient in their profession, and their testimony is considered valuable in shedding light on complex matters under consideration by courts.

In order to invoke the use of eminent domain, a project must be for the public good. Thus, these projects are related to roadways, redevelopment and installation of utilities, such as electric transmission lines and natural gas transmission pipelines. An expert witness may be needed to help prove or disprove a case for either of the two opposing sides. The condemnee is the private owner whose property is being taken, while the

condemnors are federal government agencies, state agencies such as highway departments, counties and municipalities, public utilities, and common carriers such as pipeline companies. Appraisers stake their reputation on being unbiased and therefore, facts and their opinions would not be affected by which side has engaged them.

By following a few guidelines and familiarizing yourself with the process, a qualified and experienced appraiser may find the role of expert witness to be both interesting and rewarding.

### ESTABLISHING YOURSELF AS AN EXPERT WITNESS

A great deal of initiative will be needed in order to get your name in front of the right people. Since there may only be a few potential eminent domain clients in any geographical area, it's crucial to make a strong first impression.

For online visibility, your website should serve as a strong marketing tool to position you and your firm. For your home page to be effective, it should include a description of your service offerings that will help visitors determine whether you are a good fit for their specific needs. It should also highlight your specialty as an expert witness in real estate litigation, as well as types of services you provide, such as appraisal, appraisal review and damages. Your site should include a staff listing with qualifications, contact information, published articles and reference sources. Visiting the websites of competitors, especially the ones you respect or admire, may be helpful in determining what to include on your site. When a certain competitor appears to be getting business that you are well qualified for, check their website to identify what they are doing to get the competitive advantage. Then improve your site accordingly.

## WHAT TO EXPECT

As an expert witness, your first point of contact will likely be an attorney, although they may not be the actual client. In the first conversation, the attorney will usually start with a brief description of the case to gauge your level of interest and determine whether your expertise is a good match. They will share with you the names of the parties to the lawsuit and their legal representatives to ensure there are no conflicts of interest. They will also explain what is needed, which may entail a report with an appraised value, opinion of damages or the rebuttal of opposing witnesses. A report is expected to comply with the Uniform Standards of Professional Appraisal Practice. Some engagements instead require the Uniform Appraisal Standards for Federal Land Acquisitions, commonly called the Yellow Book.

At this point, the attorney is usually facing a deadline, so they will advise you of their timeline for naming experts, providing opinions, reports or testimony. Don't be surprised if the attorney tells you that they must name an expert within a few days, even though they may have known about the case for almost a year. Often, the attorney's delay in engaging an expert is due to being focused on other more pressing matters or trying to settle the case, and not wanting to spend time or money on an expert until settlement efforts have clearly reached an impasse.

In this initial call, the attorney will probably not want anything in writing because it might be discoverable at the trial. However, they are likely to ask a variety of questions about your background and expertise. Be sure to get the attorney's contact information, including their firm's name. You will need that information to check the attorney's bar status and their firm's website to familiarize yourself with its size and scope, areas of legal specialization, geographic coverage and its overall image.

# “...their testimony is considered valuable in shedding light on complex matters under consideration by courts.”

The attorney will ask about your qualifications and your experience as an expert witness, if any. Be prepared to outline your education, professional licensing and designations. Mention similar cases you've worked on or testified in, and the number of times you have testified in a deposition and in court. Discuss your knowledge of eminent domain and ask whether the state or federal rule applies. Mention any prior work with the same firm or agency, or with opponents. And specify which appraisal guidelines and regulations you follow.

If you've taken positions contrary to the one you will be expected to support in this matter, bring them up and either disqualify yourself or distinguish them from this matter. You will need to remain completely objective and not convey even a hint of a predetermined conclusion.

## ESTABLISHING YOUR TERMS

Before you accept an assignment, determine whether you really want to work with a particular attorney. Not all attorneys are competent or qualified. That is not a slur; it was stated publicly by the late Warren Burger, Chief Justice of the U.S. Supreme Court, on a number of occasions. Working with an unqualified attorney can harm your professional reputation and increase the probability of not getting fully paid.

A first step to qualifying an attorney is to Google the attorney's name to see what information exists online. Membership in the American Bar Association Committee on Condemnation, Zoning, and Land Use of the Litigation Section is a positive indication. Consulting social media may also provide some valuable insight.

Discuss your customary terms with the attorney. Creating a list of terms and conditions in advance is essential. Fees should always be discussed up front, including hourly fees for research, testimony and all the appraisal services requested. Some experts differentiate. Deposition and trial testimony is far more stressful and demanding

than research or writing a report from the comfort of your office. You can expect the opposing attorney to ask you difficult questions at the deposition, like, “Why do you charge so much more just to meet with me and tell me the truth?” It’s as if they’re insinuating that you’re getting paid for something else.

It’s essential that you establish your availability for this assignment up front. If you have upcoming work commitments or vacation plans, tell the attorney as soon as possible.

### PREPARING A CAPABILITIES PACKAGE

Regardless of whether you are soliciting business or you receive a call from an attorney or paralegal, you will need a comprehensive package that looks professional and provides your qualifications as an expert witness. It is wise to have this prepared in advance, because this is not something you want to put together hastily. The attorney might request any of the following: résumé, list of prior testimony, rate sheet, proposed engagement letter and a client reference list.

**Résumé:** Your résumé should be complete and up-to-date, including any changes that have occurred over the past year. A major change, such as a change in employment or address, should be updated immediately. Be sure it is accurate and well-proofed. A typographical error or an omission will likely be exploited by the

opposition as their way of demonstrating that you are not to be trusted. An attorney may insinuate that, if you omitted one thing, you are likely to omit something in testimony to benefit your client.

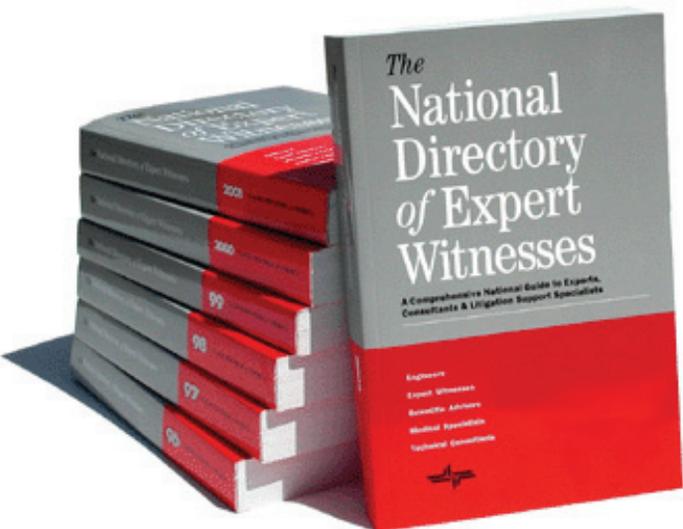
In addition to the typical information included in a résumé or curriculum vitae (name, work history, degrees, designations/certifications, awards and speeches), be sure to include the types of engagements and clients you serve, such as government agencies, law firms, corporations and individuals. Be certain to include all published articles from the last 10 years, as this is required by Rule 26.

**List of Prior Testimony:** Rule 26 of the Federal Rules of Civil Procedure and Evidence requires the expert witness to provide a list of prior testimony by deposition and at trial for the four previous years. This applies to Federal courts, so you will want to see whether this and/or local rules apply. Keep such a list on your computer so that it is easily accessible.

**Rate Sheet:** Anyone who is considering hiring you will ask for a rate sheet. This is a list of hourly rates you will charge for fees and expenses. If others work for you, list them either by name or by job title, and provide their hourly rate or range of rates by title. Your rate sheet should indicate whether the retainer applies to the first invoice or the entire duration of the assignment. You can also list your charges for copying, express mail, other out-of-pocket expenses, as well as fees for reserving dates or for cancelling meetings on short notice. It may also include penalties for late payment. Often times, clients do not want to pay your hourly rate during travel, so if you anticipate extensive travel, there are several fee possibilities. One is to ask for 50 percent of your normal billing rate while traveling. Another is to insist on payment for at least half a day when traveling. Many clients will pay for work that is performed during travel.

We encourage receipt of a retainer before beginning work, especially for new clients. Most experts insist on payment in full before testimony.

**Proposed Contract or Engagement Letter:** The municipality that seeks to hire you may have compensation limits, both hourly and total. Engaging you may require a contract that takes several weeks to process. Be patient. The attorney may ask for a proposed engagement letter, so it is a good practice to have a template available where you can fill in the required blanks. Some professional organizations offer suggested templates. Some expert witness professional associations do the same, or will sell a template for an engagement letter with terms and conditions that you may select.



Advertising can be effective if placed in targeted directories.



Remember, an expert witness's engagement letter is discoverable, so choose words that you are comfortable with and terms that won't be embarrassing when they are brought to light.

The engagement letter should provide a minimum of these elements:

- Names of the parties
- Description of the assignment
- Professional standards to be applied
- Staffing requirements
- Business arrangements or reference to rate sheet
- Terms and conditions (may be in a PDF attachment)
- Dated signatures of the parties

**References:** New clients will want your references, so keep a current list of clients with names, phone numbers and other useful information. Be sure to ask prior clients in advance for permission to use their names or call them before you distribute the list.

## PAID AND UNPAID EXPOSURE

There are a variety of ways to get exposure and promote your services as an expert witness. Advertising can be effective if it's placed in targeted directory listings and in online search engines. Professionals commonly promote their services and availability in professional directories, Yellow Pages and legal publications. You need to be aware of any limitations or requirements concerning advertising imposed by your state licensing authorities. Proper legal name, certification number and other information may be required by your jurisdiction's licensing law and administrative rules.

**Expert Witness Listings:** There are a number of firms that will include you in their directory, either hard copy, electronic, or both, for \$200 to \$2,000 per year. These include ALM Experts, Expert Pages, Expert Witness Guide, Experts.com, HG Experts, JurisPro, JVRA, LawFirmResources.org, Lexis/Nexis, National Directory of Expert Witnesses, TTLA and Zarin's Jury Verdict. Most offer an electronic listing that includes your bio or résumé, photo and a link to your website. These may be helpful to reach condemnees, but if your business depends mainly on condemnors, they might have no value.

**Direct Internet Visibility:** Yahoo! and Google AdWords provide subscribing businesses the opportunity to increase their visibility by identifying key words to find their work and to bid for the highest placement in search results. An appraiser who decides to advertise can then identify several words or phrases and state how much they will pay each time a user clicks on

that phrase in a search. For expanded visibility, key word selection and bidding for placement is offered by services like Google AdWords.

that phrase in a search. For example, an appraiser could identify "condemnation appraisal" for \$1.50. Every time a user inputs that phrase, links to the appraiser's website appear at the top of the search results, generally based on bids for keywords, from highest to lowest. The appraiser only gets charged when a user clicks on their link, and you can easily limit your potential expense by establishing a maximum cost per day. Once that amount is reached, the advertiser will no longer be featured that day in the search results.

**Free Publicity:** There are also a range of publicity and networking opportunities that require little or no out-of-pocket expense. Sources of free publicity include articles published in professional journals, speaking engagements, professional associations, personal relationships and press releases. These are free in the sense that no monetary payment is required, although the personal effort required can be tantamount to a large expense. You can also engage a publicist and arrange to pay according to the actual exposure you receive.

Press releases are an effective way to maintain external visibility. You can use these to announce awards, special recognition, a new honor, designation or speaking engagement. Most industry publications will publish your press releases if they are relevant and topical to their audience. Keep a list of publications to which you can mail announcements and keep track of which ones actually publish your release.

Writing an article for a print publication can require extensive effort, however getting published clearly validates your expertise in the subject. If you have published an article in one publication, consider sending it to others in hopes of getting it reprinted. The original publisher often seeks only an acknowledgment line.

For anyone truly serious about growing their business, hiring a marketing or publicity expert is another option. Creating an effective marketing or publicity plan may seem daunting to you, but not to a specialist skilled in attracting more business for other professionals.

## MAKING CONTACTS

Professional associations like IRWA offer prestigious designations that you can earn and membership gives you an opportunity to meet others in your field. You can offer to help fellow members, taking assignments if they are conflicted out or too busy. Becoming a volunteer officer or director of an Association confers prestige, secures visibility among peers, and can be added to your résumé. It is important to maintain ongoing relationships with colleagues, past clients and even previous opponents. Speaking, lecturing, or presenting is another excellent way of getting known. It is a good policy to hand out something with your presentation - not just printout of your slides (if you gave a PowerPoint presentation), but perhaps an article or brochure with your business card stapled to it. A brochure or flyer is a powerful follow-up to a personal meeting, as it can highlight your overall capabilities and legitimize your role as an expert witness. One can be mailed or emailed several times a year to keep your name in front of potential clients.

Given the limited number of potential eminent domain clients in your area, you will want to take the time to obtain the names of their staff of lawyers, appraisers and personnel who handle the acquisition or administration work. Contact them and let them know you would like to deliver your qualification package. Even in today's electronic information age, there is no substitute for face-to-face contact. Include your résumé, list of references and a few samples of prior appraisal work. Even if you don't get any work on the initial meeting, making that first contact is essential. You might try inviting them to an industry association meeting or event that you plan to attend. Or you can offer to join someone for lunch. But be sure to go Dutch, as government employees are not allowed to accept gratuities.

No one wants to appear too eager, but remember that potential clients are busy and can easily forget if not reminded. It's important to find a healthy frequency of contact level. Perhaps a quarterly newsletter is a good vehicle for outreach efforts. These could highlight current or past projects and showcase your company's expertise and knowledge. If mailed quarterly, you will want to include an updated section on recent developments in your field.

## PROTECTING YOUR REPUTATION

One of the best ways to get new business or expand an existing business is by word of mouth referrals. This requires that you maintain a stellar reputation and adhere to the rules in your professional code of ethics. Clients and their attorneys often want immediate answers to questions that require more time to collect and analyze relevant data properly, but you must not allow yourself to be pressured to offer an opinion without due care. State courts often view provisions in a professional code of ethics as the benchmark for reasonable care in that profession.

The basis of many lawsuits and disciplinary actions by licensing boards is negligence, which is failure to meet the duty of care required of professionals. This failure often results from accepting an assignment that does not allow enough time to ensure accuracy and completeness of services. Such assignments should be avoided.

## SUMMARY

If you have expertise in eminent domain matters and are looking for ways to expand an existing appraisal practice, becoming an expert witness may be a good fit with your current service offering. For those who aren't intimidated by difficult questions and enjoy clearly explaining complex situations, the professional challenge this kind of work offers can be especially satisfying.

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