



# EXPERT WITNESS CONSULTATION

Utilizing experts in the right of way industry

BY MAZIE LEFTWICH AND BETH MINEAR

With the increasingly sophisticated practices of the right of way industry and in response to the increasingly contentious acquisition landscape, projects across the energy, utility, transportation and other infrastructure sectors are engaging expert consultants on a regular basis. Although most commonly serving as fact witnesses in litigation and before administrative bodies, many right of way professionals can be considered experts in land acquisition, project management, valuation, reasonableness of title examination and countless other areas. An expert is one who is deemed to have specific knowledge that ordinary lay people would not typically possess. As a client company, you may need to hire an outside expert during the due diligence phase of a project for many reasons. These experts can also be called to testify on your behalf during litigation, if necessary. The engagement of experts outside of company personnel can give an additional boost to credibility and objectivity before a court or jury. These experts can also help see matters with fresh eyes from a strategy perspective.



## Session Info:

### Expert Witness Consultation: Utilizing Experts in the Right of Way Industry, Understanding their Role and Responsibilities & What To Do When YOU are Called to Be an Expert Witness

Tuesday, June 11

3:30 pm -4:30 pm

were to testify in a condemnation action in federal court as to whether there were good faith negotiations conducted by a company as a prerequisite to filing.

While it is important to review and vet credentials, it is also important to meet the potential expert(s) in person to see how they would come across to juries, courts or other tribunals. Many experts are brilliant on paper, but may not be able to articulate what they know for triers of fact (i.e. the judge or jury). They may have off-putting mannerisms or personalities that don't read well with others. You want your expert to be credible *and* likeable, and sometimes no amount of witness preparation can combat basic personality tics. Understanding how expert demeanor can be every bit as important as knowledge and experience is key to the best project outcome in the event of litigation. Incorporating these soft skills into your expert search is imperative.

Favorable personality attributes for experts include humility, eye contact, the ability to be engaging, the ability to listen and respond, a conviction of beliefs

and a professional persona. Favorable courtroom demeanor includes dressing professionally, knowing where to look when speaking, being prepared without looking like you prepared, politeness and excellent posture.

#### In Summary

In the event of litigation, knowing how to utilize, qualify and harness the opinions of experts can truly aid project execution and help mitigate risks to timeline and acquisition. This brief overview touches on many of the specifics that will be discussed in detail during the upcoming session at the IRWA Education Conference in Portland, Oregon. Attendees will learn when to use experts, how to find them and how to qualify them. Additionally, we will discuss how to position yourself to be used as an expert, what the expert consultant contract looks like and how experts should present themselves in court as to communication skills and demeanor for the best possible outcome from expert testimony. ☘

#### Choosing the Right Expert

Once you determine that an expert is needed—especially for tasks such as outreach strategy, acquisition planning for a new project footprint, or to set title examination parameters that exceed the reasonableness standard—how do you qualify experts? By defining the scope of the critical expertise required for a given issue, the field of likely expert candidates becomes increasingly smaller. The field narrows even more once client counsel or outside counsel identifies what background and skills may be necessary to pass muster under various state and federal legal requirements, as well as specific statutes that lay out competence. It is certainly a bit more complicated than one might first think. For example, Rule 702 of the Federal Rules of Evidence requires that an expert start with the requisite “knowledge, skill, experience, training, or education” and then the remainder of the rule comes into play. This would be important if a right of way professional



*Mazie Leftwich, PsyD, has spent 30 years bringing a unique psychological perspective to Right of Way training, particularly in the areas of project management, team excellence, communication and good faith negotiations. She continues to teach, speak and consult through Leftwich Management Inc. where she serves as Vice President.*



*Beth Minear, Esq., is the President of Global Project Solutions Consultants, LLC (“GPS Consultants”) which provides representation and guidance to clients in the pipeline, utility, and critical infrastructure industries in multiple states. As an attorney, she has 20+ years of experience in litigation in state and federal courts, as well being engaged as a consultant to serve as an expert witness.*