



Second Judicial District Judicial Policies

CONDEMNATION PROCEEDINGS HANDBOOK

Judge John B. Van de North, Jr., ret.

Judge John Guthmann

INTRODUCTION

This Condemnation Proceedings Handbook¹ sets out the policies and procedures relating to the courts, commissioners, petitioners (also called condemning authorities), and other parties involved in Second Judicial District eminent domain matters.

The Handbook is intended to be consistent with the law governing eminent domain proceedings. The procedures herein are based on the Second Judicial District’s Eminent Domain Policy Committee’s recommendations, Minn. Stat. Chapter 117, applicable case law, and the Minnesota General Rules of Practice.

Condemnation commissioner functions are quasi-judicial in nature.² Generally, commissioners are charged with the duties of (1) ascertaining fair and reasonable damages that are suffered as a result of an eminent domain “taking” and (2) awarding compensation that is “just” for the condemned property’s interest holders and the condemning authority.

Commissioners are not agents or representatives of either party to a proceeding and must be impartial, disinterested third parties. Commissioners are not bound by expert testimony, but should give it the weight they deem appropriate.

Please review this Handbook to better understand the duties and expectations of participants in Second Judicial District eminent domain proceedings.

JUDGE AND COURT ADMINSTRATOR

I. Judge’s Duties

- A. Review and approve or reject the condemning authority’s petition.** The petitioner will provide a proposed order for the judge’s use if the petition is approved.³

¹ This Handbook was created through the efforts of the Second Judicial District Eminent Domain Policy Committee. The District is grateful to the Committee members for donating their valuable time and expertise to this project. The Committee members were: Judge John B. Van de North, Jr., ret., Judge John Guthmann, Richard Black, Zac DesAutels, Leland Frankman, Brad Gunn, Gina Guthmiller, Corrine Heine, Erik Johnson, Patrick Kelly, Marc Manderscheid, Mary Jo Maxwell, Marilyn Michales, James Mogen, Lynae Olson, Barbara Ross, Mark Savin, Kirk Schnitker, John Matthew Schwietz, Joel Seltz, Stephanie Warne, and Paul Zisla.

² *See Antl v. State*, 19 N.W.2d 77, 79 (Minn. 1945).

³ *See infra*, “Petitioner (Condemning Authority)” § I.A.

B. Appoint three commissioners to actively serve on a given case,⁴ and appoint two alternate commissioners to step in if any of the commissioners are unable or unwilling to serve. Although not prohibited from doing otherwise, it is contemplated that the parties and the court will rely primarily on the list of potential condemnation commissioners maintained by court administration as the source of qualified persons to act as commissioners.⁵ The following procedure should be utilized in selecting and appointing commissioners in a given condemnation proceeding:

- 1. The petitioner files a proposed order appointing commissioners and alternates that includes the language used in the form attached hereto as Form C.⁶** The proposed order shall contain a list of three persons proposed to serve as commissioners and two alternates. The consent of affected property owners and interested persons to the proposed commissioners and alternates should be obtained by the petitioner to the extent possible. In cases in which no agreement can be reached among the parties, affected property owners and other interested persons may propose commissioners and alternates either at the hearing on the petition or by filing a proposed list with the court prior to the hearing.
- 2. The court issues an order appointing commissioners and alternates.** The order issued by the court should include the language used in the form attached hereto as Form C,⁷ as well as the other information required to be included in the petitioner's proposed order.⁸ In all cases, the court retains the ultimate responsibility for selecting and appointing commissioners and alternates.

⁴ For matters involving commercial properties, at least one appointee should be a person who regularly appraises or sells commercial properties and is knowledgeable in the current commercial property market.

⁵ See *infra*, "Judge and Court Administrator" § II.A.

⁶ See *infra*, "Petitioner (Condemning Authority)" § I.A; Form C.

⁷ Minn. Stat. § 117.075, subd. 3, requires the court to inquire into the impartiality of a potential commissioner "before appointing" him or her to serve. Form C provides a mechanism for the conditional appointment of commissioners. Under that language, a commissioner's appointment is not effective, and no appointment has been made within the meaning of the statute, until an affirmation of that commissioner's impartiality and disinterest has been filed with the court.

⁸ See *infra*, "Petitioner (Condemning Authority)" § I.A; Form C.

3. **If an individual chosen to be appointed as a commissioner in the court's order cannot serve, the court issues a supplemental order appointing one of the alternates as a replacement.** The supplemental order should use the language in paragraphs 1 and 2 of the form attached hereto as Form C.⁹

C. Respond appropriately to any objections to appointments of commissioners pursuant to Minn. Gen. R. Prac. 141.01.

II. Court Administrator's Duties

A. Maintain a list of potential condemnation commissioners.¹⁰

B. Provide the list of potential condemnation commissioners to litigants upon request. Litigants may request the list of potential condemnation commissioners by calling the Civil Division Court Administrator's office at 651-266-8253 or by submitting a request at:
<http://www.mncourts.gov/Find-Courts/Ramsey/Ramsey-Contact-Form.aspx>

C. Post a notice which states that qualified persons may apply to have their names placed on the list of potential condemnation commissioners. The notice must include the language of the statutory oath.¹¹ Interested persons may apply to be included on the list of potential condemnation commissioners by filling out and submitting Form B (attached to this policy).

⁹There is no requirement that the court inquire into the impartiality of alternates (as opposed to commissioners) before their appointment under Minn. Stat. § 117.075, subd. 3. If there becomes a need to appoint an alternate as a commissioner, the same conditional-appointment procedure discussed *supra* and provided for by Form C should be used to ascertain impartiality and effect the appointment.

¹⁰The list of potential condemnation commissioners will include information from Form B.

¹¹*See* Minn. Stat. § 117.075, subd. 4.

D. Once an order conditionally appointing commissioners¹² has been signed in a given case, inquire into the impartiality of each appointee.¹³ The court administrator should send each appointee a letter in the form attached hereto as Form A.1, enclosing a copy of (1) the order appointing commissioners; (2) Form A.2 (attached to this policy), to be used for the appointee's response; and (3) Form B (attached to this policy), if a Form B is not on file for the appointee and the appointee is not already on the list of potential condemnation commissioners.

E. Arrange for the administration of and administer the statutory commissioner oath to appointees.

PETITIONER (CONDEMNING AUTHORITY)

I. Duties

A. File separate proposed orders with the court for (1) public purpose approval and (2) commissioner appointment. In addition to any other requirements imposed by law, the proposed order appointing commissioners must conform to the requirements set forth *supra*, "Judge and Court Administrator," § I.B.1. It must also include the legal description of the property and the amount of compensation and mileage fees to be paid to commissioners.¹⁴ Finally, it must instruct the appointees to appear at the court administrator's office for purposes of taking the oath of commissioners. (The proposed order must include blanks for the court to complete as to the time and date for the administration of the oath.)

B. Upon request of the commissioners, prepare and submit an initial draft of a form for the commissioners' award.¹⁵

¹² See *supra*, "Judge and Court Administrator" § I.B.1-2 & n.7; *infra*, Form C.

¹³ Minn. Stat. § 117.075, subd. 3.

¹⁴ Current compensation and mileage fees are set forth *infra* at page 10, "Commissioner Compensation."

¹⁵ See *infra*, "Commissioners" § IV.A.4.

- C. **Notify the parties that the commissioners have filed the award with the court within ten days after the date of the filing.**¹⁶
- D. **Promptly pay commissioners following receipt of verified fee statements.**¹⁷

COMMISSIONERS

I. Qualifications

- A. **To be qualified for appointment as a commissioner, a person must be an impartial and disinterested third party who is:**
 - 1. **actively engaged in real estate sales or real estate appraising; or**
 - 2. **a registered, practicing attorney who is knowledgeable in eminent domain matters; or**
 - 3. **otherwise knowledgeable in real estate values.**

II. Duties of All Commissioners

- A. **Select one commissioner to serve as chair.** Whenever possible, the chair should be an attorney who is knowledgeable in eminent domain matters.
- B. **Appoint the registered, practicing attorney on the commission (who may also be the chair) to rule on any disputed questions of law that arise in the matter, including questions as to the admissibility of evidence.** If the designated commissioner-attorney cannot resolve a legal question, a party may present it to the court by motion.
- C. **View the property subject to condemnation.**¹⁸
- D. **Ascertain the damages, if any, that will be suffered and determine an award of just compensation.**

¹⁶ Minn. Stat. § 117.115, subd. 2.

¹⁷ *See infra*, “Commissioners” § II.H.

¹⁸ Minn. Stat. § 117.085; *see infra*, “Hearings and Viewing Procedures” § II.

- E. Act impartially, allowing nothing other than evidence received at open hearings and each commissioner's own valuation knowledge and judgment to affect the commission's decisions.**
- F. Be courteous, prompt and respectful at all times.**
- G. Prepare an award in accordance with Minn. Stat. § 117.085.**
- H. Submit to the petitioner, at the conclusion of the commission's service, a verified statement of fees and expenses, which shall be paid promptly.**

III. Additional Duties of the Chair

- A. Schedule and determine the time and location for all viewings (including the initial viewing) and hearings, and for the disclosure of the award.** The chair is responsible for providing written notice to all parties regarding scheduling.
- B. Preside over all hearings.** The chair is responsible for administering oaths to each witness and ensuring that hearings are conducted in a fair and impartial manner.
- C. After giving notice to the petitioner, file the award with the court administrator in accordance with Minn. Stat. § 117.115, subd. 1.** The chair is responsible for notifying counsel for the petitioner that the award has been filed.

IV. Powers and Prohibitions

- A. Commissioners shall work cooperatively, as a commission, to exercise their powers and discharge their duties in accordance with Minn. Stat. § 117.85. Commissioners' powers include:**
 - 1. Taking testimony.** Unless the parties and the commission expressly agree otherwise, testimony must be taken in person, publicly, under oath, and in the commission's presence. Without express approval by the parties and the commission, testimony may not be taken by telephonic, video telephone, email, text message, voicemail, or any other similar means. Commissioners should be aware of the limitations on testimony imposed by Minn. Stat. § 117.036, subd. 4, when appraisals are not timely exchanged.

2. **Issuing subpoenas.** When the commission deems it appropriate, and upon the request of a party, any of the commissioners may subpoena witnesses pursuant to Minn. Stat. § 117.085 and Minn. R. Civ. P. 45, at the cost of the requesting party. The commissioners must provide adverse parties and the subpoenaed witness notice and reasonable time to object to any subpoena.
3. **Requiring parties to produce maps, plats, and other information.** A commission can require the parties to furnish, for the commission's use, maps, plats, and other information identified in Minn. Stat. § 117.085 showing the nature, character, and extent of the proposed project and the situation of the lands it requires.
4. **Requesting the petitioner's attorney to prepare an initial draft of a form for the award.** All parties should attempt to agree upon the form of the award.
5. **In the commissioners' discretion, allowing (and showing separately in addition to the award of damages) reasonable appraisal fees.**
Appraisal fees are not to exceed a total of \$1,500 for single-family and two-family residential property and minimum damage acquisitions and \$5,000 for other types of property, unless the appraisal fee was previously reimbursed under Minn. Stat. § 117.036.

B. Commissioners may not:

1. **Engage in ex parte communications.** Prohibited ex parte communications include requests for commissioners to issue subpoenas, submission of expert materials to commissioners, and discussion of any matter that is substantive or non-administrative in nature.
2. **Receive expert reports or appraisals except as permitted by law.** Expert reports or appraisals may not be submitted to or received by a commissioner, except at the hearing, or at such time prior to the hearing as materials are exchanged by the parties pursuant to the parties' agreement or pursuant to Minn. Stat. § 117.036.
3. **Discuss the proceedings outside of hearings.** Except as they may appear at hearings on the matter, commissioners must not discuss the proceedings with any of the parties, parties' representatives, attorneys, or witnesses, expert or otherwise.

4. **Collect evidence during viewings and hearings except as permitted by law.** During viewings, commissioners may not discuss the parties' positions with the parties or their representatives. During hearings, and until the commission files its award with the district court, commissioners must not discuss the case with anyone other than fellow commissioners, nor read or listen to anything touching the matter in any way, except such material introduced and formally received as evidence in the hearing relating to the parcel.

DISCOVERY EXCLUSION

Discovery under the Minnesota Rules of Civil Procedure is not available to parties in condemnation commission proceedings.

HEARINGS AND VIEWINGS PROCEDURES

I. Hearings¹⁹

- A. **Hearings are to be conducted as simplified proceedings.** The presence of a court reporter is not required by statute and one will not be provided by the commission. A party may provide a court reporter at its own expense and upon reasonable notice to the commission and all other parties to the proceeding.
- B. **Hearings are to be held at neutral venues not controlled by any party.** The parties may waive this requirement by agreement.

II. Viewings

- A. **The initial viewing should occur no later than 60 days after the commissioners are sworn.** However, the parties, with the approval of the commissioners, may postpone the initial viewing to a later time. Whenever appropriate, the initial viewing should occur prior to the commencement of construction.
- B. **Additional viewings may be held whenever appropriate.** Additional viewings may be scheduled sua sponte by the commission as a whole in its discretion, or upon the reasonable request of any party or commissioner.

¹⁹ See also *supra*, "Commissioners" § IV.B.4.

POST-HEARING MATTERS

I. Deliberation and Disclosure of Award

- A. The commissioners meet as a group to discuss the testimony and other evidence presented by the parties in order to come to an agreement as to the amount of the award.**
- B. Once the award is determined, the chair shall notify counsel and schedule a time and date for the commissioners to meet with counsel to disclose and sign the award.** While an in-person conference is preferable, if the parties agree, or if the chair deems it necessary, the award may be disclosed by electronic or regular mail instead of at an in-person meeting. The chair may require the petitioner's attorney to confer with all parties and prepare a mutually agreeable draft for the form of the award.
- C. At the scheduled time and date, the commissioners inform counsel of the amount of the award and sign it.**

II. Post-Award Communications²⁰

- A. Commissioners may, at their discretion, grant an informal post-hearing interview to discuss the award.** The interview may be conducted either immediately after the commissioners sign the award, or during a separate meeting with all serving commissioners shortly thereafter.
- B. If the award is appealed to district court, all additional communications between parties and commissioners must proceed as formal depositions.**

III. Compensation for Post-Hearing Activities of Commissioners

- A. Commissioners are to be compensated for post-hearing, pre-appeal activities at the commissioner compensation rates established herein.** This includes compensation for time spent deliberating, revealing the award, and discussing the award informally with counsel for the parties.

²⁰ Commissioners need not produce notes related to the interview.

B. Any commissioner who is formally deposed after an award is appealed to district court should be compensated as an expert witness would be in any other case, in an amount provided by statute and determined to be reasonable by the court.²¹

COMMISSIONER COMPENSATION²²

I. Commissioner Services and Expenses Compensation

A. Compensation for services:

<u>Service</u>	<u>Definition</u>	<u>Compensation</u>
Half Day	4 Hours	\$300
Full Day	8 Hours	\$600
Administrative Work	Includes: scheduling, signing the final award, meeting parties or their attorneys regarding hearing-related matters and pursuant to notice, and reading expert reports and party submissions.	\$125/hour

²¹ Minn. Stat. § 357.25.

²² Second Judicial District Policy No. P11.03. The rates in Policy No. P11.03 may be amended from time to time and eminent domain participants should check current rates. Use of current rates is mandatory by order of the Chief Judge dated November 17, 1997.

B. Compensation for expenses:

<u>Expenses</u>	<u>Compensation</u>
Mileage & Parking	Equal to the amount approved for Ramsey District Court employees.

II. Public Service Recognition

After each commission adjourns, the presiding judge for each proceeding should appropriately recognize the commissioners' public service, which may include sending each commissioner a letter of appreciation.

RECOMMENDED CONDEMNATION PROCEEDINGS FORMS

FORM A.1

[On Court Letterhead]

[Appointee Name]
[Address]

**Re: [Case Name]
[File Number]
**Proposed Order Appointing Commissioners: Impartiality and Disinterest
Statement.****

Dear [_____]:

The Court plans to appoint you as a commissioner in the above-referenced eminent domain matter.

Before your appointment can become effective, you must affirm that you have no interest in the property or relationship to the parties to this action that would, or may appear to, constitute a conflict of interest or interfere with your rendering a fair and impartial decision.

A copy of the order for your appointment and a form letter for your response to the Court are enclosed.

Please address your response and any questions about this appointment to:

Michael F. Upton
Civil Division Administrator
Second Judicial District
15 W. Kellogg Boulevard
St. Paul, MN 55102
(651) 266-8197

District Court Judge

FORM A.2

[DATE]

Michael F. Upton
Civil Division Administrator
Second Judicial District
15 W. Kellogg Boulevard
St. Paul, MN 55102

**Re: [Case Name]
Court File No. _____**

Affirmation of Impartiality and Disinterest

Dear Ms. Olson:

I reviewed the Court's letter and order in the above-referenced matter and I hereby affirm that I have no interest in any of the subject properties or entities involved in this proceeding.

Further I do not currently or regularly provide professional services to any party or attorney in this matter.

I understand that the obligation of complete impartiality is a continuing one, and that if, at any time following my appointment, a conflict of interest arises, I am obligated to contact the Court and the parties to disclose the issue and offer to withdraw as Commissioner, subject to Court review, and after notice to all parties that appeared in the proceeding.

[OR]

I hereby disclose the following in the nature of professional services provided to the following attorneys and/or parties in the matter:

Sincerely,

FORM B

**SECOND JUDICIAL DISTRICT
CONDEMNATION COMMISSIONER APPLICATION**

For appointment consideration, please send (1) a one-page cover letter and (2) a completed copy of this Application¹ to:

Michael F. Upton
Second Judicial District Civil Division Administrator
15 West Kellogg Boulevard, St. Paul, MN 55102
Or

michael.upton@courts.state.mn.us

I. Information

II. Qualifications

A. Name:

Last / Middle / First

B. Preferred Mailing Address:

Street Number / Street Name

City / State / Zip

C. Preferred Telephone Number:

Include Area Code

D. Email:

E. Highest Education Level Completed:

Degree Earned / Institution / Year

**F. List All Languages In Which You Are
Fluent, Including Sign Language:**

A. Mark the Box that Best Describes You.

- Actively engaged in real estate sales or appraising.
- Registered, practicing attorney who is knowledgeable in eminent domain matters.
- Knowledgeable in real estate values.

B. Relevant Occupation:

Job Title / Company / Years Employed

C. Professional Specialty Areas:

**D. Current (1) Professional Certificates,
Designations, Licenses, or Registrations
Related to Eminent Domain Matters and
(2) Your License or Registration Numbers:**

III. Optional Diversity Statement²

	<u>YES</u>	<u>NO</u>
Diversity Statement Attached?	<input type="checkbox"/>	<input type="checkbox"/>

IV. Signature

Signature (do not print)

Date

The information provided above is true and accurate to the best of my knowledge. I acknowledge that I may not be appointed pursuant to M.S. § 117.075, and I authorize the State of Minnesota, and any agent acting on its behalf, to inquire into any job-related information contained in this application and release them from all liability of requesting such information from any person.

¹ False information may subject applicants to penalties. See Minn. Stat. § 43A.39 (2012).

² Optional diversity statements should briefly describe an applicant's personal or professional experience related to working with people of various backgrounds (*i.e.*, race, color, religion, sex, or national origin), and should not exceed 100 words.

FORM C

**Example of Possible Supplemental
Language to Order Appointing Commissioners**

Commission:

1. The following individuals will be appointed to serve as commissioners in the above-referenced proceeding upon fulfillment of the condition in paragraph 2:

2. Each individual's appointment shall be effective, without further order of the court, at the time the court administrator's office receives and files a signed affirmation of impartiality and disinterest from that individual. The form attached to the Condemnation Proceedings Handbook as Form A.2 may be used as an affirmation of impartiality and disinterest.

3. The following individuals are hereby named as alternate commissioners to serve if needed:

If an appointed commissioner cannot serve, an order will be issued conditionally appointing one of these alternates as a commissioner once his or her impartiality has been determined per paragraph 2 above.