



**MINNESOTA
JUDICIAL BRANCH**
TENTH JUDICIAL DISTRICT

**CONDEMNATION
PROCEEDINGS HANDBOOK**

Tenth Judicial District – Anoka County

Anoka County Court Administration
2100 3rd Avenue
Anoka, MN 55303-2489
763-760-6700 or Fax 763-712-3247

INTRODUCTION

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

The Handbook is intended to be consistent with the law governing eminent domain proceedings. The procedures herein are based on the recommendations from Judicial Officers in the Tenth Judicial District, Anoka County, MN. [Minn. Stat. Chapter 117](#), applicable case law, and the [Minnesota General Rules of Practice](#).

JUDGE/COURT ADMINISTRATION/PETITIONER/COMMISSIONER DUTIES

Condemnation commissioner functions are quasi-judicial in nature. 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 Anoka County condemnation proceedings.

APPLICATION AND QUALIFICATIONS FOR 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.

Qualified persons wishing to serve as commissioners in condemnation proceedings may apply to the Anoka County Court Administrator. Applicants must provide a list of their qualifications on a resume and cover letter. The resume and cover letter shall be kept on file and available for review. Applicant shall send their resume and cover letter to:

Anoka County Court Administration
Attn: Court Administrator
2100 3rd Avenue
Anoka, MN 55303-2489

I. Judge 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.¹
- B. **Appoint three commissioners to actively serve on a given case,² 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's 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.³ The following procedure should be utilized in selecting and appointing commissioners in each 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 B.**⁴ 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 B,⁵ as well as the other information required to be included in the petitioner's proposed order.⁶ In all cases, the court retains the ultimate responsibility for selecting and appointing commissioners and alternates.

¹ See *infra*, "Petitioner (Condemning Authority)" § I.A.

² 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.

³ See *infra*, "Judge/Court Administration/Petitioner/Commissioner Duties" § I.B.

⁴ See *infra*, "Petitioner (Condemning Authority)" § III.A; Form B.

⁵ [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 B 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.

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

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 B.⁷

C. Respond appropriately to any objections to appointments of commissioners pursuant to [Minn. Gen. R. Prac. 141.01](#).

II. Court Administration's Duties

A. Maintain a list of potential condemnation commissioners⁸.

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 763-760-6810.

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.⁹ Interested persons may apply to be included on the list of potential condemnation commissioners by completing a cover letter and resume.

D. Once an order conditionally appointing commissioners¹⁰ has been signed in each case, inquire into the impartiality of each appointee.¹¹ The court administrator should send each appointee the following documents:

1. A letter in the form attached hereto as Form A.1
2. A copy of the order appointing commissioners
3. Form A.2 (attached to this handbook)
4. Form C (attached to this handbook)

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

⁷ There 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 A.2 should be used to ascertain impartiality and effect the appointment.

⁸ The list of potential condemnation commissioners will include information from cover letters and resumes.

⁹ See [Minn. Stat. § 117.075, subd. 7](#).

¹⁰ See supra, "Judge/Court Administration/Petitioner/Commissioner" § I.B.1-2 & n.7; infra, Form B.

¹¹ [Minn. Stat. § 117.075, subd. 3](#).

III. Petitioner's 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/Court Administration/Petitioner/Commissioner," § I.B. It must also include the legal description of the property and the amount of compensation and mileage fees to be paid to commissioners.¹² 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.**¹³

C. **Notify the parties that the commissioners have filed the award with the court within ten days after the date of the filing.**¹⁴

D. **Promptly pay commissioners following receipt of verified fee statements.**¹⁵

IV. Commissioner's Duties

A. **Select one commissioner to serve as chair.** Whenever possible, the chair should be an attorney who is knowledgeable in eminent domain matters.

1. 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.

¹² Current compensation and mileage fees are set forth *infra* at page 9-10, "Commissioner Compensation."

¹³ See *infra*, "Commissioners Duties" § IV.G.

¹⁴ [Minn. Stat. § 117.115, subd. 2](#).

¹⁵ See *infra*, "Commissioners Duties" § IV.H.

- 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.**¹⁶
- D. **Ascertain the damages, if any, that will be suffered and determine an award of just compensation.**
- 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 always.**
- 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.**

POWERS AND PROHIBITIONS OF COMMISSIONERS

I. Powers and Prohibitions

- A. **Commissioners shall work cooperatively, as a commission, to exercise their powers and discharge their duties in accordance with [Minn. Stat. § 117.085](#). 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.

¹⁶ [Minn. Stat. § 117.085](#); see *infra*, "Hearings and Viewing Procedures" § II.A.

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 \$1,500.00 for single-family and two-family residential property and minimum damage acquisitions and \$5,000.00 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, except 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. Hearings¹⁷

- 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 in its discretion, or upon the reasonable request of any party or commissioner.

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 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 date and time 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.

¹⁷ See also *supra*, "Commissioner Duties" § IV.A.1.a-b.

C. At the scheduled date and time, the commissioners inform counsel for the award and sign it.

II. **Post-Award Communications**¹⁸

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.

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.¹⁹

COMMISSIONER COMPENSATION

I. **Commissioner Services and Expenses Compensation**

1. Compensation for services:

<u>Service</u>	<u>Definition</u>	<u>Compensation</u>
Half Day	4 Hours	\$250
Full Day	8 Hours	\$500

¹⁸ Commissioners need not produce notes related to the interview.

¹⁹ [Minn. Stat. § 357.25](#).

2. **Compensation for expenses:**

<u>Expenses</u>	<u>Compensation</u>
Mileage & Parking	Equal to the amount approved for Anoka 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

- I. Form A.1 – Appointment Letter (Page 11)
- II. Form A.2 – Affirmation of Impartiality (Page 12)
- III. Form B. – Proposed Order language for Appointment of Commissioners (Page 13)
- IV. Form C. – Commissioner's Oath (Page 14)
- V. Form D. – Official Notice Regarding Appointment of Commissioners (Page 15)



**MINNESOTA
JUDICIAL BRANCH**
TENTH JUDICIAL DISTRICT

[Date]

[Appointee Name]
[Address]

Re: [Case Caption]
[File Number]

Dear [_____]

The Court plans to appoint you as a commissioner in the above referenced proceeding. 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, petition, and Affirmation of Impartiality are enclosed for your review. Please address your response and any questions regarding this appointment to:

Lori O'Brien
Anoka County Court Administrator
2100 3rd Avenue
Anoka, MN 55303-2489

Sincerely,

[Civil Staff Info]

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Re:

[Court File No.]

**AFFIRMATION OF IMPARTIALITY
AND DISINTEREST**

Dear Ms. O'Brien:

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 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 professional services provided to the following attorneys and/or parties in the matter:

Commissioner

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 their impartiality has been determined pursuant to paragraph 2 above.

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF ANOKA

TENTH JUDICIAL DISTRICT

Court File No. [Type here]

[Type here] _____

Petitioner(s)

COMMISSIONER'S OATH

vs.

[Type here] _____

Respondent(s)

[Type here], does swear under penalty of perjury as follows:

I will faithfully and justly perform to the best of my ability, all the duties of the office and trust which I now assume as commissioner in the above-entitled proceeding. I further swear that, except as disclosed in writing or on the record, I have no interest in any of the lands in the above proceeding or any present or past relationship, business or personal, with any of the parties to the above proceeding or any other actual or potential conflict of interest, and that I will render fair and impartial decisions, so help me God.

I declare under penalty of perjury that everything I have stated in this document is true and correct. Minn. Stat. § 358.116.

Date: _____

[Type here]

County and state where signed:



**MINNESOTA
JUDICIAL BRANCH**
TENTH JUDICIAL DISTRICT

**OFFICIAL NOTICE REGARDING APPOINTMENT OF
COMMISSIONERS IN CONDEMNATION PROCEEDINGS**

Pursuant to Minnesota Statute §117.075, notice is hereby given that a qualified person may apply to have their name placed upon a list of potential commission appointees for eminent domain proceedings with:

**Anoka County Court Administration
Attn: Court Administrator
2100 3rd Avenue
Anoka, MN 55303-2489**

“Before appointing a commissioner, the court shall inquire whether each prospective commissioner has any relationship, business or otherwise, to any of the parties in the proceeding, or any interest in the proceeding which may constitute a conflict of interest, or which may create the appearance of impropriety should that person be appointed. Responses to this inquiry must be either written or on the record and made available by the court to any party in the proceeding before and after appointment. No person who might have difficulty rendering an unbiased decision may be appointed to serve. The court, in its discretion, may appoint one registered, practicing attorney to the commission who is knowledgeable in eminent domain matters. All other commissioners appointed must be persons actively engaged in the occupation of real estate sales or real estate appraising or persons knowledgeable in real estate values.”

Appointees must be sworn by the court administrator or an authorized deputy and shall take and sign the following oath:

(TITLE OF PROCEEDING)

_____ does swear under penalty of perjury as follows:

I will faithfully and justly perform to the best of my ability, all the duties of the office and trust which I now assume as commissioner in the above entitled proceeding. I further swear that, except as disclosed in writing or on the record, I have no interest in any of the lands in the above proceeding or any present or past relationship, business or personal, with any of the parties to the above proceeding or any other actual or potential conflict of interest, and that I will render fair and impartial decisions, so help me God.

The court shall give due consideration to the names appearing on the list but is not bound to make appointments from the list.

Lori O’Brien
Court Administrator