



FOURTH JUDICIAL DISTRICT

COMMISSIONER GUIDELINES AND COMPENSATION IN CONDEMNATION PROCEEDINGS

(Approved by Civil Bench on June 21, 2022)

**FOURTH JUDICIAL DISTRICT COURT
CONDEMNATION PROCEEDINGS**

A. GUIDELINES.

Minn. Stat. § 117.085 provides that after being duly sworn and qualified according to law, the commissioners shall have the following powers and duties:

1. To view the premises involved in the proceeding.
2. To take testimony, providing it shall be given publicly, under oath and in the commissioner's presence.
3. To subpoena witnesses (which shall be served as subpoenas in civil actions are served and at the cost of the parties applying therefor).
4. To require, if deemed necessary, the petitioner or owner to furnish maps, plats, and other information which the parties may have showing the nature, character, and extent of the proposed undertaking and the situation of the lands desired therefor.
5. To reserve, in proper cases, to the owner a right of way or other privilege in and over the land taken.
6. To attach reasonable conditions to the taking, in proper cases, in addition to the damages given.
7. To make an alternative award, in proper cases, conditioned upon the granting or withholding of a right specified.
8. To make, without unreasonable delay, a separate assessment and award of damages that they believe will result to each of the owners of the land by reason of such taking.
9. To allow and show separately, in their discretion, a reimbursement to the owners of reasonable appraisal fees 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 already reimbursed.
10. To show in their report, when requested by an owner, the amount of damages which is to reimburse the owner and tenant for the value of the land taken and the amount of the award of damages, if any, which is to reimburse the owner and tenant or lessee for damages to the remainder involved, whether or not described in the petition.
11. To show separately in their report the amounts awarded to each person.

12. To show in their report, when requested, an express finding of the estimated cost of removal and remedial actions that will be necessary on the taken property because of existing environmental contamination.

B. POLICIES OF DECORUM.

1. Your functions as a commissioner are quasi-judicial in nature. You should act in all respects as a judge would, impartially, and without fear or favor, and without allowing anything except the testimony you hear in open hearings and your knowledge of values and judgment to affect your decision in any way. To that end, you should remember that:
 - a. You are not an agent or representative of either party; and
 - b. You must ascertain the damages, if any, which will be suffered and an award such as will constitute just compensation for such loss as required by our law.
2. The law requires that you must be disinterested commissioners to ascertain damages to be awarded. In this respect, we have checked with each of you, and you have disclosed potential conflicts of interest, if any, in writing or on the record of the court, as well as have taken the statutory oath. However, if after hearing more about the case and the parties, or for any other reason, before or during your tenure as a commissioner, you find that you have some present or potential interest or conflict of which you were not previously aware of and disclosed, you must contact the judge who appointed you and disclose to the court and the parties the problem and offer to disqualify yourself, subject to review by the Court, after notice to all appearing parties, or their attorneys, in the proceeding.
3. In order to maintain such a position, you must not discuss this matter with any of the parties, or their representatives, attorneys, nor witnesses, expert or otherwise, except as they may appear before you at hearings on the matter. During the presentation of the case and your deliberations, you must maintain absolute impartiality, and neither by word nor sign indicate that you favor any party to the proceedings.
4. At all times, you should be dignified, courteous, respectful, and considerate of the parties, witnesses, and the lawyers.
5. You shall have the duty to see that each witness is sworn separately and that the oath is administered to witnesses in a manner calculated to impress them with the importance and solemnity of the oath taken.
6. You shall be responsible for order and decorum at the hearings and shall see to it that at all times the parties and witnesses in the case are treated with proper courtesy and respect. Lecturing, browbeating, badgering, or shouting at a witness should not be

allowed. You must be unswayed by partisan interest, public clamor, or fear of criticism.

7. You should not permit any unnecessary conversation, loud whispering, newspaper or magazine reading, or other disconcerting or distracting activity by anyone in the hearing room during the progress of the hearing.
8. The lawyer appointed to this commission is an officer of the court and should, at all times, uphold the honor and maintain the dignity of the profession.
9. It is the responsibility of the lawyer on the commission to rule on any questions of law which arise in this matter on which the attorneys for the parties do not agree. It is not necessary to accept the position of any attorney. If the attorney commissioner feels he is unable to resolve a question of law, it may be brought to the court for advice, but only after reasonable notice to both parties of the time, place, and nature of the request for advice.
10. You shall be punctual and convene the hearings and be prompt in the performance of your duties and require the parties, attorneys, and witnesses to also be punctual.
11. Your hearings should not be as formal as court trials, but they should be conducted in a dignified and orderly manner.
12. If there are lawyers representing the parties in the matters before the commission, you will have little trouble in following the above instructions because lawyers understand that this is the way these proceedings should be conducted. If the parties are not represented by attorneys, you may have more difficulty, but a kind and firm statement that you can receive no evidence or listen to any statements except in open hearings, should be sufficient. In this specific connection, it should be pointed out by you to the parties, the owners, and their representative that the purpose of the viewing of the premises is not to gather evidence or learn of the parties' positions.
13. During the course of the hearings, and until such time as you have filed your final report with the district court, you should not discuss this case with anyone nor read or listen to anything touching the matter in any way, except such material which was introduced and formally received as evidence in the hearing relating to this parcel.
14. Your responsibility is to ascertain the fair and reasonable amount of the damages, if any, on the basis of recognized standards, and you are not bound by expert testimony, unless it seems reasonable and proper to you.
15. In summary:

In every particular, your conduct should be above reproach. You should be conscientious, studious, thorough, courteous, patient, just, and impartial.

C. **PROCEDURAL POLICIES OF CONDUCT.**

1. The scheduling and notices of viewings and hearings setting definite times and places shall be conducted and provided by the chairman of the commission, who shall notify all parties thereof in writing.
2. The commissioners may, if they deem it to be appropriate, or at the request of a party, conduct prehearing conferences after ten (10) days' written notice to all parties, or their attorneys, for each parcel, for the purpose of: scheduling meetings; identifying issues and disclosures of previous rulings on similar issues by this same panel of commissioners; obtaining stipulations of fact; and such other matters which would tend to promote orderly and fair hearings. However, unless ruled otherwise by the appointing judge, the general rules of discovery are considered inappropriate at the commission level.
3. If there is more than one parcel involved in the proceeding, the commissioners are encouraged, to the extent reasonably possible and practical, to file the awards for all parcels at one time, except when to do so would create a hardship to one or both of the parties.
4. The chairman of the commission shall notify appearing parties, or their attorneys, in writing, at least seven (7) calendar days in advance of its intention to file the Report of Commissioners. The notice shall specify the date, the time, and the location of this final meeting. Insofar as practical, it is recommended that this meeting of the commissioners, on any given parcel, be conducted in the offices of the District Court Administrator to ensure the prompt filing of the Report of Commissioners. The commissioners may prepare their own form of report or they may delegate this responsibility to one or both of the parties; but, in any event, it should, unless waived, be reviewed by the attorneys appearing in the proceedings for both parties prior to its entry and filing. It is the statutory duty of the commissioners, after notice to the petitioner, to file their Report with the Court Administrator of District Court.
5. At the time of the entry and filing of the final Report of Commissioners, it is appropriate and desirable for the commissioners to disclose to the parties appearing pursuant to notice, the basis and reasons for the award. This information, which preferably should be made simultaneously to both parties at the final meeting, does not prohibit later discussion by the commissioners with either party or their representatives or attorneys.
6. The commissioners shall maintain their condemnation files for each parcel intact for a period of at least thirty-six (36) months from the date of the filing of the Report of Commissioners or until advised by the petitioner that the matter has not been appealed by either party or has been disposed of by settlement or in some other manner.

7. The commissioners shall not provide copies of any expert witness report or exhibit produced at a hearing to anyone not a party to the particular parcel involved. (The commissioners, upon such a request, should direct the requesting person to the parties or the attorneys representing the parties for such information to eliminate an appearance of impropriety).
8. Upon making an award for a parcel, each commissioner shall submit to the petitioner a certified, itemized statement in the form attached hereto. The statement shall be completed in accordance with Section "D" below.

D. ADDITIONAL GUIDELINE RECOMMENDATIONS.

1. Unless required by a judge in open court only, neither the petitioner nor any respondent shall recommend any person to act as a commissioner in a condemnation proceeding.
2. The commissioners appointed in condemnation proceedings shall consist of:
 - (a) a licensed real estate person actively engaged in real estate sales;
 - (b) a certified federal general real property appraiser who holds a current, valid license under Minn. Stat. § 82B;
 - (c) a registered attorney knowledgeable in eminent domain matters. In no event shall more than one attorney serve as a commissioner on any panel.
3. Upon the appointment of the commissioners, the petitioner shall, upon request of the Court, immediately notify all respondents by mailing a copy of its Order to such persons named and included on the petitioner's mailing or service list, and also to all attorneys who have appeared of record in the proceedings. In addition, all parties or attorneys so requesting shall be provided in addition to the Order, a copy of all responses to the Court's inquiry of prospective commissioners pursuant to Minn. Stat. § 117.075. The first meeting of commissioners shall not be set for at least fifteen (15) days from the date of the filing of the order to allow objections to be made and decided pursuant to Rule 141.01 of the General Rules of Practice for District Courts.
4. No person shall be appointed as a commissioner if presently serving in that capacity in more than a total of thirty (30) active pending parcels.

5. Each commissioner in condemnation proceedings shall be allowed the following compensation:

- (a) For a full-day meeting, a sum not to exceed \$800.00; for a half-day meeting, a sum not to exceed \$400.00. A "meeting" shall mean each time the commissioners get together as a group to view the subject property; to hear or consider evidence in the proceedings; or to conduct and hold prehearing conferences and posthearing deliberations as provided herein.

In addition, \$125.00 per hour for scheduling matters; viewing comparable properties; reading memoranda and expert reports; reviewing exhibits; signing the final report; and, meeting with the parties or their attorneys, pursuant to notice, regarding matters relating to the proceeding.

The commissioners shall also receive the sum of \$200 for taking the oath of office.

- (b) When a hearing previously scheduled by a commission is canceled on less than 24 hours' notice, the commissioners, if seriously inconvenienced, may be paid \$400.00 for the canceled hearing, providing the specific nature of the inconvenience be detailed in writing to the petitioner. For purposes of this section, mere loss of commissioner fees shall not constitute inconvenience.
- (c) In addition, the commissioners shall be allowed a mileage allowance equal to the current Federal IRS Mileage reimbursement rate and parking expenses necessarily incurred in performance of their duties.
- (d) Except for administrative duties as outlined above, no commissioner shall seek compensation for services as a commissioner that exceeds \$800.00 for a single day involving all condemnation matters, including any other separate condemnation proceedings.
- (e) The billing for all such services by the commissioners shall be made by the submission of a Uniform Certified Billing Statement, a copy of which is attached.
- (f) Upon filing a Report of Commissioners, each commissioner shall prepare a Uniform Certified Billing Statement in the form herein required. The statement shall be completed in accordance with the policies of the Fourth Judicial District Court and shall be given to the chairman of the commission. Upon receipt, all commissioner statements shall be forwarded to petitioner, who upon verifying their accuracy will proceed to pay each commissioner promptly.

- (g) The guidelines provided herein regarding the compensation for commissioners shall be effective, subject to amendment by the Fourth Judicial District Court's Civil Committee, for actions commenced prior to June 30, 2024 it being the Court's intent, through the Civil Committee, to re-evaluate commissioner compensation at that time, and on a periodic basis into the future.
- 6. The petitioner shall notify the commissioners, in writing of the completion of the proceedings as to any parcel, whether by the absence of an appeal from the award of commissioners, settlement, judgment, or any other disposition.

