

Testifying as an Expert Witness as a Title Examiner

Description

Article by Julie Ann Rutledge

“Information is not knowledge. The only source of knowledge is experience. You need experience to gain wisdom.”

Albert Einstein

This quote described my reality upon graduation from University with a BSW, many moons ago.

The excitement of graduation was quickly squashed by the lack of available jobs in my field. All the jobs in my major required experience. Besides my volunteer work, I had no work experience. After searching, I found a job through a friend, an entry level position working in the office at a title company. I worked my way up later to become a title examiner and then became a title insurance agent. Today, searching titles is still my first love.

Historically, title examination training was an apprenticeship approach, with a mentor to guide the way. This is how I learned to search titles, and over the years, I have found that one of the things I love about title research is that you never stop learning. Each title is unique, with different scenarios that challenge us to seek knowledge. This can also be said about testifying as an expert witness, as a title examiner. There are many types of hearings, in many different settings. It can be in an informal setting with the Special Commissioner appointed by the court and the interested parties, or it may be in a formal setting in court with a judge presiding, the attorneys, expert witnesses, and all interested parties.

As a Title Examiner, what do you do if you are asked to testify as an expert witness? How do you prepare? I wanted to share some of my thoughts and experiences that I have learned over time:

A. You receive a title order with a request to testify:

- Ask the client the reason for the title search. What is the dispute? It is important to know ahead of time what the issues are. What type of research has been requested? For instance, if the purpose is to determine what liens are on the property, you would need to do a full title search, not a current owner bringdown. This actually happened in one hearing.
- Ask the client when the hearing is scheduled and make sure you are available.
- Go to the courthouse and pull the suit to review the documents and familiarize yourself with the issues of the case.
- Do your homework. Conduct the title search yourself; you can't testify as to someone else's title work. Discuss your findings with the client.
- Remember that as the title examiner, you are doing the research to provide the facts of the title.

B. How to prepare for the hearing:

- Be prepared to list your qualifications and experience as an expert witness.
- Prior to hearing, take the time to review the title report in-depth, commit it to memory.
- It is a good idea to take two title reports with you. One for yourself and one for the client, in case the court requests that the title report be submitted into the record.

C. Testifying at the hearing: How to be prepared for questioning:

- Be brief and concise, and do not elaborate. Do not volunteer information.
- Listen to the question and take a few moments before answering in case your client or others want to intervene.
- If you are uncertain of the question, let them know you don't understand the question and ask for clarification.
- Testifying can be nerve-racking, especially when put on the spot, But try not to panic. Remain calm and do not get emotional or become defensive.
- Do not take sides, be impartial. Be professional and answer questions factually and remember that you are testifying as to the factual information from your title report.
- Complex titles and questions: If you are unsure of the answer to a question, ask for time to review the title report in order to answer the question correctly. Then let them know when you are ready to resume.
- If asked what your expert opinion is, beware. A title examiner cannot have an "opinion," only an attorney can have an "opinion of title." As a title examiner your responsibility is to report the facts of title.

To make this article a little more interesting, I thought that I would share a few examples of cases in which I have testified as a title examiner.

Example #1: My first hearing! so many moons ago!

I still remember my first hearing. It was held in an attorney's office in Fairfax in what looked like a residence in a casual setting. The attorney client was the appointed special commissioner in the suit. I had completed the title work for an acreage parcel. The current owner had died intestate, and it was a rather complex estate. I brought my file with me for reference in case there were questions concerning the heirs of the estate, and I remember being nervous. In the conference room, there was a court reporter, the special commissioner, another attorney and what appeared to be the heirs of the estate. I took a seat next to my client, the special commissioner. There seemed to be tension between the heirs of the estate. During the hearing, I was asked to introduce myself and described my experience as a title examiner. Then I was asked to report my findings concerning the estate and what documents I found of record. I presented my testimony and after answering questions, I was told that I could leave. Afterwards, I remember thinking that besides the tension in the room, overall, it went well, that wasn't so difficult!

Example #2: Testifying in a courtroom with a judge presiding! many moons ago!

My second experience testifying in a more formal setting. It was a bit nerve-racking being in a courtroom with a Judge and other attorneys and all the other people in the courtroom. I remember being sworn in and going to sit in the witness stand. This is where being prepared really came in handy. I had brought my title report for reference. I kept reminding myself to remain calm and be professional, and to answer questions factually and succinctly. I was asked questions by my client and there was no redirect for the opposing counsel. It is a bit of a blur after that, I remember thinking I got through it,

whew!

A few other examples for your review:

Example #3: Let's call this 'Schooled by the Judge'

Over the years I have found that one of the things I love about title research is that you never stop learning. This can also be said about testifying as an expert witness. In this situation I had searched multiple parcels that were adjacent to each other and were situated on the water. Each parcel had a separate and different chain of title, with similar ownership but differing tenancy. The tenancy and ownership were in question in this case, and I was brought in to testify as an expert witness. This was in a formal court setting with a Judge presiding. I was prepared, had reviewed my title searches prior to court, and I thought I was ready. I was sworn in and asked to state why I was an expert witness and described my experience. I was asked to go over the title reports of the owners in each chain of title and how they acquired the property in the Deeds. Then I was asked what is your opinion on how the owner in one of the Deeds held title? I began to answer the question but was interrupted by the Judge, who said "as a Title Examiner you can't have an opinion, only Attorneys can have an opinion. Title searchers can only report on the facts of title." There was much discussion between counsel and the Judge, and then I was asked to leave the courtroom, but to wait in case I was called back to testify. There are times when the learning experience is a hard lesson. Now I know that as a non-attorney title examiner, I cannot have an "opinion of title" even as an expert witness, my job is to only report the facts of title.

Example #4: Let's call this the 'John Smith' Estate 'Five adjacent parcels owned by an estate'

It is difficult to be prepared for all the questions that may arise during the hearing, and some seem to come out of left field. In this situation it was an informal special commissioner hearing at an attorney's office, we were seated around a conference table. I was asked to research five adjacent parcels, which were owned by the Estate of 'John Smith.'* The parcels shared common ownership, however each of the parcels had separate chains of title. The parcels were located in the same area, with common ownership, but there was no plat of consolidation. I wasn't informed of all the particular issues of the case. I was asked to testify by the Special Commissioner on the title reports and my client began with questions about the searches and the ownership interests. Then the opposing counsel asked, "Aren't these parcels generally known as one farm, known as the 'John Smith' Farm? And aren't there plats that show this?" I asked the special commissioner to go off the record so that I could review my title reports to answer the question. It took a few minutes to go through everything, then I let the special commissioner know that I was ready to resume. The opposing counsel asked the question again and I replied, "No there was nothing of record and no plat of consolidation of record that stated all five parcels were part of a Farm. The Title Reports showed only plats for a few of the parcels, each with separate chains of title." Suffice it to say, he was not pleased with my answer. The title examiner may have general knowledge of an area and families in that area; however, the title report is based on the facts found of record.

Example #5: Buyer beware 'Read the restrictions'

In this situation, I was asked to testify about a subdivision that was created in 1989 and to determine if the special assessments pertained to a specific lot in a specific section. As a title examiner I had actually worked on this subdivision as it was developed. This required additional research beyond an

individual Lot search. I had to follow the different sections as they were developed over time, paying particular attention to the restrictive covenants, as they were supplemented, amended, and modified. This was a formal proceeding in court with a judge presiding, both attorneys, interested parties and other expert witnesses. In this case the owners had received bills from the homeowners association for special assessments, and they were challenging the validity because they were not aware they were subject to any special assessments. I was called to the stand and sworn in, and then my client asked me questions. When it came time for opposing counsel to ask questions, the first question he asked was, "As an expert witness, what is your opinion of title? Do these special assessments apply to this lot and section?" I turned to him and answered, "As a title examiner, I cannot have an opinion, only an attorney can have an opinion of title." As a title examiner, I can only report on the facts of title. I continued to answer the questions he posed, and his final question was, "Aren't all the sections in this subdivision subject to the special exceptions?" My answer was no. I replied that I had actually searched this subdivision as it was being built in 1989. That I had reviewed all the restrictions of record, and this section was never made subject to the special exceptions by declaration, supplemental declaration, or by modification or amendment. The court found in favor of the defendants and that they were not responsible for the special assessment. Lessons may be learned the hard way, but experience becomes a valuable asset for the future.

In Conclusion: Here are some of the takeaways that I have learned in my experience over the years:

- Testify only on your title work: In order to testify as an expert witness, you must search the title yourself. You cannot testify about someone else's title work.
- Do your homework. Review the documents in the pending suit. Do your title search and allow time to review the title report prior to the hearing. Bring two copies to the hearing.
- Be informed: Ask questions about the search requested, the pending suit, and discuss the results of the search with your client.
- Be aware: Similar to a title search, each hearing is different. Understand that the judge, the special commissioner, and the attorneys may have differing perspectives and opinions.
- Be professional and calm: Answer questions precisely and factually. When asked a question, If you don't understand or are unsure of the question, ask for clarification.
- Be prepared: You may not be prepared for all the questions thrown your way, but it is important to review and bring your title work with you, so that you can refer back to the facts of title that you found.
- Report the facts of title: Remember that a title examiner acting as an expert witness cannot have an opinion of title, they can only report the facts of title.

I hope you found this information and my shared experiences helpful.

Perhaps I'll see you in Court



Julie Ann Rutledge is President and owner of Land Title Research Inc. in Stafford County, Virginia, and is a graduate of James Madison University. Julie held a Title Insurance Agent License for 18 years, and currently holds the VLTA VCTE Certification designation. Julie Ann Rutledge was appointed to the Stafford County Board of Zoning Appeals (BZA) in 1992, serving through 2006 and was elected as Chairman of the Stafford County BZA for three terms. She graduated from the Virginia Board of Zoning Appeals Certification Program conducted by VA Tech in 2000. After graduating, Julie was called upon to be an assistant instructor for the Virginia Board of Zoning Appeals Certification Program. In August 2012, Julie developed the VLTA Virginia Certified Title Examiner (VCTE) Classroom Course serving as the instructor, and then went on to develop the VLTA VCTE Online Course, which was launched in 2016 and ran through March 2022. Julie Ann Rutledge served on the VLTA Board of Directors as VLTA Past President 2021-2022. She has been a member of the VLTA Board of Directors since 2015, has served as the Director/Editor of the VLTA Examiner Magazine, and has been a member and volunteer of the VLTA since 1996. She has served on the VLTA Examiner Magazine Editorial Board since 1997, serving as columnist of The Abstract View and Title Tips & Trivia for the VLTA Examiner Magazine.

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