Not all appraisers have to begin their work in litigation with an upset stomach, however. There are many proactive steps that one can take to prepare and make litigation a part of their business. There are many specialties that can serve not only to diversify your practice but also to provide an avenue for gaining experience as an expert witness. Business valuations, condemnations, divorce, estate and title insurance claims are some examples of valuation fields that involve litigation. An appraiser can solicit business directly or forge a relationship with a mentor already established in that particular field of litigation. These put appraisers on the road to gaining the experience and customer base necessary to make litigation a consistent part of their business.

Branching into litigation work is not always planned. Terrie L. Tasch-Sensing, MAI, Woodstock, Ill., was informed about her first courtroom appearance when she received a subpoena in the mail concerning an appraisal that she had performed. Was she nervous? Of course she was. “I didn’t know what to expect,” she said. Before going to trial her more experienced partner offered her some sage advice: “Take a couple of Pepto-Bismol,” he advised.

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Rounding Out Business
The need for diversification encouraged C. Daniel Breding, SRA, of Rocky Mountain Appraisal Services, Inc., Aurora, Colo., to begin soliciting legal business. After a crash in the real estate market, Breding put his name out and told colleagues and associates that he was available for litigation work. It snow-balled from there. In part, this is because in litigation the appraiser is working directly with the attorneys involved in the suit. Referrals carry a lot of weight in a field that may only have a handful of lawyers specializing in a given locality. Lawyers, after all, will want to continue to work with appraisers they know will be prepared and able to articulate clearly for the jury.
This happened to C. Spencer Powell, MAI, of PGP Valuation, Inc., Salem, Ore., who said that good verdicts lead to more business. Once an appraiser has had a couple of good days in court, their reputation will begin to be known among attorneys. Powell had some good verdicts early on and since then his litigation business has increased so much that now half of his business comes from litigation. Gerald F. Hansen, MAI, of Hansen & Co., Inc., Hollister, Calif., adds that “a good relationship with attorneys doesn’t guarantee constant business, but it does mean referrals.”

Second, appraisers who can find the opportunity should work with a mentor. Apprenticeships are an excellent way to ease into litigation work, according to Tasch-Sensing. Pointing to previous jobs where she had little guidance from other experienced appraisers, Tasch-Sensing advises appraisers new to litigation work to “associate with someone actively involved in this area and willing to help train you.”

Skills needed to become an expert witness
Those interviewed echoed common sentiments on the necessary traits; among them:

- You should be technically proficient at doing valuations.
- You should be articulate. Being able to effectively communicate complex ideas and calculations to a variety of audiences (i.e., your client, a jury, the judge, etc.) will make you a valuable witness.
- You should be honest. You make a more convincing, and thus effective, witness if you are being 100 percent honest.
- You should have a good memory.
- You should be able to take criticism and be self-critical.

Getting Started
For those branching into litigation, there are important steps to take. First, it is important to be proactive in educating and training yourself so that you are sufficiently equipped. Legal associations, such as The Center for American and International Law (www.swlegal.org), can offer resources and seminars to keep you informed about the areas of litigation you are involved in. Joining a public speaking class or club, such as Toastmasters International (www.toastmasters.org), can give you an avenue to hone your public speaking skills and improve your ability to communicate effectively. Specialized associations, such as Forensic Consultants Association (www.forensic.org) located in California, can also offer you guidance and support that is particular to the needs of an appraiser as an expert witness.

The Appraisal Institute also offers a variety of books and educational programs aimed at litigation support, namely the book Real Estate Valuation in Litigation, 2nd edition, Course 700—The Appraiser as an Expert Witness: Preparation and Testimony and the seminar Litigation Skills for Appraisers: An Overview. For complete offerings, visit www.appraisalinstitute.org.

Secondly, as Richard Neustein, MAI, SRA, Los Angeles, Calif., summed up in one sentence: “Be sure of your facts.”

Thorough preparation is essential to becoming an effective expert witness in the litigation process.
expert witness. The client is paying not only for someone who can communicate effectively, but someone who will stand up under examination by the opposing counsel. “A factual error will kill you!” stressed Powell when discussing the importance of preparation. The discovery of a small math error or the use of wrong numbers can destroy the validity of your valuation, he added. Neustein feels so strongly on this subject that he will refuse a job if he knows that he doesn’t have sufficient time or resources to properly prepare the report for trial. One client, after months of stalling, finally called Neustein nine days before the case was to go to trial and wanted to hire him. He did not possibly have the time to do a thorough job so he did not take it.

Sometimes even after thorough preparation a courtroom testimony may not go as planned. Powell, who stresses that “preparation is key” to being a consistently good expert witness, still found himself in a trial that was not going his way. Powell had been asked to value a piece of property that he coincidentally had valued 15 years earlier. The earlier valuation was much lower due to a depressed real estate market at the time of that first appraisal. The attorney for the opposing party jumped on this and Powell reported that the attorney was “very skilled at making me seem inconsistent.” Days like these will happen in court. Excellent preparation, nonetheless, will keep an appraiser composed on the witness stand.

Aside from preparing the testimony, the third recommendation is to also prepare your personal presentation. The way you dress, your mannerisms, your posture, your eyes and the way you speak all contribute to how you are received by a jury or judge. As Taylor put it, focusing effectively on your audience is as important as what you say to them. It is a kind of performance and as any performer knows, this means that you must be open to criticism. People are not always received the way they may think, and it takes other people to point out possible areas of improvement. Neustein feels that the ability to take criticism about your presentation is necessary if you are going to be successful as a witness. He once had a client tell...
QUESTIONS YOU SHOULD BE PREPARED TO ANSWER ON THE STAND

- Will you point out on a map the location of similar properties that have sold and their location relative to the subject?
- Will you describe those comparable sales that were considered by you?
- Do you consider a frame building comparable to a brick building (and vice versa)?
- Do you consider a two-story building comparable to a one-story building (and vice versa)? (Also, residential v. commercial and single-use v. multi-use.)
- What is meant by “under improvement,” “over-improvement” and “proper improvement”?
- Are there any matters outside of the subject property which have not been covered by you that you believe have an effect on the market value of the subject property?
- Would your opinion of the market value of this property be any different if you were appraising for the other side in this case? Would it differ if a condemnation were not involved?
- Have you been able to arrive at an opinion of the market value of the subject property being taken based on your experience, education and investigation?
- What, in your opinion, is the market value of the subject property? (Be aware of the trick question: Do you know the value of this property?)
- Is it not a fact that appraising is an inexact science?
- How close to actual market value is considered reasonable?
- Have you ever been wrong in an appraisal estimate of value?
- Do you consider yourself infallible?
- Is it not true that two or more reputable appraisers may disagree as to the market value of a particular property?
- Is it not a fact that no one is expert enough to know: (a) the exact remaining economic or physical life of any property; (b) what a property’s selling price will be; and (c) what a property might rent for?

“Associate with someone actively involved in this area and willing to help train you.” – Terrie L. Tasch-Sensing, MAI

Profitable but Taxing

Many appraisers get into litigation support since it is more intellectually challenging and it is profitable. On the other hand, Taylor pointed out that “not everyone is cut out for litigation.” With the intellectual challenge of preparing a valuation for trial comes stress. As a witness in a trial the appraiser is at the whim of any new developments in the course of the client’s case. In other words, the appraiser does not get to decide the timeline.

Richard Betts, MAI, SRA, of Betts & Associates, Oakland, Calif., recognizes that an appraiser wants to come to court well prepared; however, he points out that flexibility is needed because you don’t know what may be asked of you. For example, a client had hired Betts to value properties spread out all over the United States for use in a marital dissolution. Betts merely had some preliminary numbers prepared when the client called. There was a change in the client’s position and the attorneys wanted to depose Betts immediately. The figures he had were far from adequate, but he went to the deposition, went through the numbers with the attorney, and the eventual settlement reflected the numbers Betts had given.

There is no doubt that litigation is a thriving area of appraisal work and can be very lucrative for those who want to take on the challenge. Although this area of work can be more stressful, it offers a profitable way to diversify an appraisal practice. Litigation work now makes up about one-third of Tasch-Sensing’s business. She enjoys the challenge and the profit that it provides her. She admits it can be stressful, but says, “As long as you carry out your duties with integrity and competence, you’ll do well.” She also admits that she still carries Pepto-Bismol in her purse when she goes to court, but she claims that she doesn’t actually need to use it anymore.

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