

Public Appointment and Swearing-in of Expert Witnesses

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ABSTRACT

One of the most distinguished tasks of the Chamber of Engineers is the public appointment and swearing-in of expert witnesses in the field of technical engineering.

Besides, it is the effort of the Chamber of Engineers to call attention to the exceptional importance of the appointed and sworn expert witness in our labour-divided and technified daily business for

- companies as well as for
- authorities and courts
- but also for the single consumer,

to stress the independent and impartial expert in his importance as a mediator between the state and its citizens. At the same time, the state should thereby be relieved of his tasks and controllable for the security of the consumers.

However, only the designation *expert witness* does not offer any guarantee for quality as this designation is not protected by law. **The public appointment of specially qualified expert witnesses is an award designated by the legislator.**

The public appointment and swearing-in is **not** a vocational admission but an award for a special vocational or technical qualification respectively, expressed by a governmental legal act.

Many applicants for public appointed and sworn expert witness are convinced of their qualification as expert witness. This has to be assessed absolutely positively as without a certain portion of self-confidence, an expert witness would not be in the position to fulfill his task and to withstand the accusations and remonstrances at court. But this self-confidence must not degenerate in an exaggerated opinion of himself.

Unfortunately, the field of expert witnesses is becoming increasingly unclear. Expert witnesses who are not appointed and sworn, and who are justifying their expert opinion by different manners are not concerned with the following remarks.

The representation of all engineers in Lower Saxony had been assigned to the Chamber of Engineers as a public corporation by the law for engineers. On a long-term basis, it has to be expected that the biggest part of technical expert witnesses are public appointed and sworn in

by the chamber. Especially in view of the European development of expert witnesses, this will take a wide space at the Chamber of Engineers of Lower Saxony.

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1. PRELIMINARY REMARKS

One of the most distinguished tasks of the Chamber of Engineers is the public appointment and swearing-in of expert witnesses in the field of technical engineering.

Besides, it is the effort of the Chamber of Engineers to call attention to the exceptional importance of the appointed and sworn expert witness in our labour-divided and technified daily business for

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to stress the independent and impartial expert in his importance as a mediator between the state and its citizens. At the same time, the state should thereby be relieved of his tasks and controllable for the security of the consumers.

However, only the designation *expert witness* does not offer any guarantee for quality as this designation is not protected by law. **The public appointment of specially qualified expert witnesses is an award designated by the legislator.**

The public appointment and swearing-in of expert witnesses is due to the legal position of

- § 36 Gewerbeordnung
(Industrial Code)
- § 19 Abs. 1 des Niedersächsischen Ingenieurgesetzes
(Law for engineers of Lower Saxony)
- der Sachverständigenordnung (SVO)
(Code of expert witnesses) and
- der Sachverständigenprüfungsordnung (SVPrüfO)
(Code of expert's examination rules).

The public appointment and swearing-in is **not** a vocational admission but an award for a special vocational or technical qualification respectively, expressed by a governmental legal act.

Unfortunately, the field of expert witnesses is becoming increasingly unclear. Expert witnesses who are not appointed and sworn, and who are justifying their expert opinion by different manners are not concerned with the following remarks. To this group belong in particular

- Self-appointed expert witnesses
- Expert witnesses accepted by organisations of expert witnesses

- Expert witnesses certified by private offices of certification
- The big number of other expert witnesses appointed by whoever.

2. . WHY DOES ONE EVEN NEED THE PUBLIC APPOINTED AND SWORN EXPERT WITNESS?

In case of factionalism about rents and leases, unsettled boundaries, valuation of freelanced practices, forced sales and other juridical disputes, often only an expert opinion helps on.

Here, a public appointed and sworn expert is postulated who is appointed by the parties or by a court.

The expert opinion of the public appointed and sworn expert witness enjoys an elevated authenticity in public and at courts and therefore provides the basis for an amicable agreement. In case of controversial issues the expert is often able to decide out of court quickly and bindingly.

The consumer just as the professional work-mate must be able to rely on that the called expert is

- 1. technically in the position to clear and explain the facts of the case thoroughly and exhaustively and**
- 2. that he makes up his expert opinion impartially and objectively.**

Therefore, only persons who dispose of above-average knowledge and experiences of a special subject area and are specially suitable for an independent making up of expert opinions, are allowed to hold the designation *public appointed and sworn expert*. So, a professional and a personal qualification is demanded; both prerequisites the chamber scrutinizes before an appointment. Thus, the chamber secures a high quality standard in the field of expert witnesses.

**The public appointment of expert witnesses takes up a special rating
in our today's society!**

3. HOW DO I BECOME A PUBLIC APPOINTED AND SWORN EXPERT WITNESS?

The appointment to a public appointed and sworn expert witness is only possible if also the conditions of an appointment are given and an (informal) application in written form has been placed. The applicant has to enclose with his application a string of documents and declarations.

The conditions of appointment are regulated in § 3 of the SVO of the Chamber of Engineers:

- The applicant has to place an informal application in written form.
- He has to hand in a written explanation

- that he disposes of knowledge of the SVO and the SVPrüfO and
 - that he will undergo an examination according to the SVPrüfO as well as
 - that he declares the readiness to take on the duties of a public appointed and sworn expert.
- The branch office or the principle domicile must be in the area of the district of the chamber.
 - The 63rd year of the applicant's life must not be accomplished.
 - There must exist no objections against his personal qualification.
 - He has to dispose of an above-average technical knowledge as well as practical experience in the aimed field of appointment and the ability to report expert opinions, usually by presentation of qualified expert opinions concerning the applied subject.
 - He has to dispose of an adequate vocational experience and must have accomplished his 30th year of life.
 - He has to dispose of the equipment required for the exercise of the occupation as expert witness.
 - He must guarantee for impartiality and independence.
 - He also must have both writing and speaking knowledge of the respective language.

After that, following documents have to be enclosed with the application:

- Curriculum vitae with a photo and a representation of professional background
- Authenticated copies of diplomas
- A magisterial certificate of good conduct (not older than three months)
- A certificate of non-objection given by the inland revenue office
- At least three reference addresses
- Proof of the attendance of at least two expert seminars
- At least three different kinds of self-produced expert opinions, publications or equivalent written elaborations

- A certificate of exemption or part-time work of applicants in salaried employment
- Proof that he has paid the examination charge.

The submitted documents are examined by the office and references about the applicant are consulted. If the references have arrived completely, the committee of expert witnesses decides on the personal qualification of the applicant. Usually a personal talk with the applicant takes place. It shall give information on the applicant's ability of transmitting oral representations and know-how, and on his general appearance.

If in the opinion of the expert's committee the prerequisites are fulfilled by the applicant, the responsible committee of examiners will be called in. This board examines the submitted written elaborations. Essentially, the committee scrutinizes the applicant's ability of giving an expert opinion and gets an insight into his technical knowledge. The committee of examiners decides whether the applicant can be admitted to the examination in Special Expertise.

The examination of Special Expertise usually consists of:

- A qualifying examination in written form
- An oral exam (technical discussion) as well as
- A written and/or oral **rhetorical** exam.

The **rhetorical** examination concerns a written elaboration of questions not directly touching the subject, but which are relevant in cooperation with courts. To this belongs for example the handling of comprehensive questions concerning the field of the BGB (Civil Code) and the VOB (Code of execution of Civil Engineering), of questions of process development or of questions directly touching the expert – as for example the settlement of an on-site inspection.

The public appointment and swearing-in take place on decision of the chamber's board of directors and is – at the present – usually limited to five years. After that, the appointment can be unlimitedly renewed but at the longest until accomplishing the 68th year of life.

4. NOMENCLATURE

A nomenclature is a representation of all partitions of a certain field of knowledge, here for example engineering. The current nomenclature was authorized by the chamber board in 1998. However, this can never be seen as a fixed representation of all expert fields. It is rather subject to continuous changes and supplementations as there will constantly turn up new expert fields and designations.

The nomenclature facilitates the adequate classification of the expert himself, with generally introduced and in everyday usage unmisunderstandable denominations. At the same time, it serves the transparency aimed by engineers, of engineering in public.

The current nomenclature is divided in six specialisms. These are:

- 1. Civil engineering**
- 2. Measurement engineering**
- 3. Building services engineering**
- 4. Electrical engineering**
- 5. Mechanical engineering**
- 6. Husbandry and forestry, horticulture, viticulture and fishery.**

These specialisms are divided into main areas to which again subareas have been classified to.

The assessment of value is assigned to the area Civil Engineering which is again subdivided into three subareas. In the area Measurement Engineering, there are actually three main areas in which only the measurement of engineers is again divided in three subareas. A special arrangement is valid for the main area “Official Measurement Engineering”. All public appointed measurement engineers are expert witnesses because of the occupational regulations.

5. SYNOPSIS

Many applicants for public appointed and sworn expert witness are convinced of their qualification as expert witness. This has to be assessed absolutely positively as without a certain portion of self-confidence, an expert witness would not be in the position to fulfill his task and to withstand the accusations and remonstrances at court. But this self-confidence must not degenerate in an exaggerated opinion of himself.

The committee of expert witnesses assumes that the sound knowledge – the Special Expertise – occupies one expert witness. If an applicant thinks of being qualified for different main areas in the field of Civil Engineering, then he will surely have a good general knowledge on these fields. The Special Expertise, that means an above-average profundity of knowledge, he will not be able to show in none of the different main areas. The desired appointment to a public appointed and sworn expert witness could surely not be awarded to this applicant. The previous achievements in the field of expert witnesses confirm the Chamber of Engineers that it is on the right way.

The representation of all engineers in Lower Saxony had been assigned to the Chamber of Engineers as a public corporation by the law for engineers. On a long-term basis, it has to be expected that the biggest part of technical expert witnesses are public appointed and sworn in by the chamber. Especially in view of the European development of expert witnesses, this will take a wide space at the Chamber of Engineers of Lower Saxony.

BIOGRAPHICAL NOTES

Dipl.-Ing. Jörg Gebauer, (54) has studied in Hannover 1968-1974. He has worked in the administration development in Hannover 1974-76 and as a surveyor in the civil service in Celle 1976-79, as a surveyor in the municipal corporation of Bremerhaven 1979-83 and as a public surveyor with an own office since 1983. He is the leader of the DVW-working group 1 and member of the engineer society in Lower Saxony. He lives in Langen, Germany.