



# Kachina Chapter 28, Newsletter

January, 2009

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# Incoming Officers Chapter 28

## 2009 Kachina Chapter

### Executive Board

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# 2009!!!



# President's Message

Happy New Year! It is an honor to serve as Chapter 28 President for 2009, and I thank you for your confidence in me to do so.

2009 – a new year. The dawn of a new year signifies change, and 2009 certainly brings change ... a new United States President, economic conditions that challenge us all, and a keener awareness that, globally, we are all riding this rock called Earth together.

But a new year also brings hope. We make New Year's Resolutions in anticipation of bettering our world and ourselves.

As a chapter, we have seen 50 "New Years". Our 2008 Seminar theme was "Looking Toward the Next 50". Chapter 28 has seen a lot of change in its half century of existence. We can expect nothing less of the next 50.

One of the potential changes, realigning the Regions (including moving the Arizona chapters from Region 1 to Region 9), will be decided in Las Vegas in January at the Federal Agency Update. Chapter 28, along with other chapters, continues to express opposition to this change – not simply because it is "change", but for all the very logical reasons outlined before by 2008 President Doug Estes, SR/WA.

I am optimistic that whatever challenges await our chapter in 2009, we will – as we've always done – rise to meet them with each other's help. I encourage you to become active in the chapter to whatever level you are able. The Executive Board encourages your attendance at our membership meetings, and welcomes your contributions to any of our committees.

**Happy New Year!**  
**Kathie A. Sholly, SR/WA**



# Val Hernandez - SRP

36

Years



**IRWA Special Services Award**  
**Valued Member since 1972**

**Congratulations!**

# TESTIFYING in a Court of Law and other TERRIFYING TASKS

By Gaye Rutan, Chief Appraiser , Maricopa County Public Works, Real Estate Division.

Testifying in court can be both terrifying and intimidating. Here are a few tips to gain control of the situation.

## TIPS for TESTIFYING

- 1) When you are testifying or giving a deposition, ask yourself, 'Who controls the pace of the questioning while you are on the witness stand?'
  - a. The attorney asking the questions
  - b. The Judge
  - c. You
  - d. All of the above

If you answered anything other than 'C', you need to re-gear your thinking before you testify or give your next deposition. The witness is in control. Here is the key... the attorney can not ask another question until you have answered the first question they asked.

**Do not rush to answer the question.**

Think and then respond. The record (particularly in depositions) only show pauses for official breaks, they do not typically show pauses in speaking. Take time to think your response all the way thru. Ask yourself the question, "Where is this attorney heading with their questioning?"

- 2). When you are testifying your job is to:
  - a. be helpful in cross examination
  - b. protect yourself in cross examination
  - c. testify to the facts and give your opinion of value
  - d. all of the above

If you answered anything other than 'C', you need to re-train yourself before you testify or give your next deposition. The expert witness (appraiser) is responsible for testifying as to the facts used in the report to determine their opinion of market value. Here is the key....

**Do not be helpful!!!!**

Attorneys are paid very well to extract information from you. Do not give just 'yes' and 'no' answers. Sometimes a little elaboration goes a long way. For example, recently an attorney was cross-examining me and kept using the term 'damages' this stifled me and I kept saying, "I can't answer that the way the question is asked." Notice I did not say 'I can't answer that,' (very different meaning). Finally, the attorney got frustration and asked why I could not answer the question. I said, "Damages have a specific legal definition that I do not apply to this property." I went on to say "From an appraisal point of view the property was not damage. There were no Severance Damages. From an appraisal point of view the market value of the property was \$, \$\$/SF and the part taken is then \$, \$\$\$." The attorney went right back in and said, "so the property was damaged!" "No," I responded, "it was not damaged according to the legal definition of damages."

You can imagine how very differently this would have turned out if I had stepped over the term 'damages', answered the question and allowed him to continue to use the term damages in cross-examination. Elaborate sufficiently to get your point across and be credible.

Do not try to sell the appraisal to the court and do not wait for your attorney to pull it out of you in re-direct. It is your opinion of value, state it, explain it and do not be trapped by being too helpful. NOTE: When on the stand it is very easy to want to say more and be helpful. Do not do that unless it clarifies your point.



- 3). When you are testifying who has the right answer?
- Me, of course I am always right!
  - The other appraiser, he has a thicker report
  - The guy with the best attorney
  - None of the above

The answer is 'd'. Testifying is not a contest to see who has the 'right' answer. Testifying is explaining your professional opinion of value. You are testifying to facts and supporting your opinion. What you are not doing is speculating. If the attorney asks you a question that is counter to the facts, be very clear that this is speculation. Example, I once had an attorney ask me, "If the remaining land was 2 acres instead of 10, would there have been damages?" (*Notice this question has two parts. The normal human tendency is to answer the second part and say "Yes" Then you are trapped because you just said 'yes' to something other than the facts and this can be misconstrued later to discredit you.*)

Another response to more clear and logical response would be to ask, "Are you asking me to speculate on something other than the facts of this case?" Notice the response is very clear about the first part of the question where the attorney is asking you to speculate on something other than the facts.

If the attorney says, 'Yes' then one of two things will happen. Either the attorney who hired you will object (sometimes they aren't on the ball and don't object, particularly new attorney's) or you can respond with, "I can't answer anything about the case other than what I know to be the facts." Today my skills are a little more polished and I can usually get a way with an innocent comment like, "Oh!? Is this a new set of facts for this case?" If you are new to testifying in court please do not try this as it can leave you open to a verbal sparring match, which can look combative to a jury and ruin your credibility.

If the attorney keeps pressing, you can say, "I was summoned to testify as to my opinion of value based on the facts in the appraisal. If the facts are other than those used in the appraisal, and you would like me to give an opinion using additional information, I will need all the facts and time to conduct an analysis."

Occasionally a Judge will direct you to respond to the speculation. If that happens then you must get all of the facts before answering. (*How will you form an opinion if you do not know where the take is located?*) Be very clear for the record. Ask the attorney to draw a diagram. Then you can say, "I am speculating here to a question about the property that is not consistent with the known facts.....etc" Note: In deposition, attorneys often ask questions that do not relate to the case at hand but are exploring ideas and questions for another case. Do not let this throw you, just remember to be clear verbally that this is speculation.

Once, I had an attorney use speculation from a deposition, bring it to court and ask me if I had said this statement. Then he quoted the statement from the deposition. At face value; it looked like I was countering my testimony. (Not a good position to be in if you want to remain credible!) I stopped. Then I asked if they would show me the statement in the deposition. I took the time to read before and after the underlined statement. When I finished I said, 'Yes, I said this and it is taken out of context. The statement as read to the court is not applicable to the facts of this case. During deposition, you asked me to speculate on something that was not part of this case and you are now quoting that speculation out of context. The statement in the deposition is very clear that you had asked me a question not pertaining to the facts of the case and I was very clear that my answer was speculative.' Remember you gave your deposition one to 6 months prior to trial. You will not remember everything you said. However, if you have re-read the deposition the day before you testify then you will be sufficiently familiar with the content to be able to testify.

When testifying, be interested, be polite, do not take anything personal and do not speculate unless directed by the judge. Be prepared to feel tired afterward. It takes a great deal of focus to pay attention to the attorney's questions and your answers for extended periods. This is particularly true the first few times you testify.

The main reason you are on the witness stand is that ***you are the expert***. As the expert, you are answering questions as to your conclusions and opinions derived from the facts of the case. You are also answering the unspoken question of the judge and jury, "Do I believe this person?"

**Sticking to the facts and knowing that you control the pace of questioning can provide you with power and credibility as an expert witness.**



# 2009

## Chapter 28, Education Schedule

C-203 **Alternative Dispute Management** 02.03.09 - 02.04.09,  
at Glendale Regional Public Safety Training Facility.

C-700 **Property Management** 02.05.09 - 02.06.09 at City of Glendale

C-900 **Principles of Real Estate Engineering** 03.25.09 - 03.26.09 at APS

C-901 **Engineering Plan Development and Application** 03.27.09 at APS

## International Education Schedule

### Basic Right of Way Disciplines

#### 104 - Standards of Practice for the Right of Way Professional

104 Standards of Practice for the R/W Professional 01.11.09 Las Vegas, NV  
104 Standards of Practice for the R/W Professional 02.09.09 Bloomington, MN

### Communications / Negotiations

#### 200 - Principles of Real Estate Negotiation

200 Principles of R. E. Negotiation 02.17.09 Sacramento, CA  
200 Principles of R. E. Negotiation 03.09.09 Bloomington, MN

#### 203 - Alternative Dispute Resolution

203 Alternative Dispute Resolution 01.11.09 Las Vegas, NV  
203 Alternative Dispute Resolution 02.23.09 Boise, ID

#### 213 - Conflict Management

213 Conflict Management 02.11.09 Shreveport, LA  
213 Conflict Management 02.13.09 San Diego, CA

#### 215 - Right of Way Agent's Development Program

215 Right Of Way Agent's Development Program 01.08.09 Carlsbad, CA

### Appraisal

#### 400 - Principles of Real Estate Appraisal

400 Principles of Real Estate Appraisal 01.11.09 Las Vegas, NV

#### 401 - Appraisal of Partial Acquisitions

401 The Appraisal of Partial Acquisitions 01.12.09 Springfield, IL  
401 The Appraisal of Partial Acquisitions 03.09.09 Tucson, AZ

#### 403 - Easement Valuation

403 Easement Valuation 01.21.09 Kearney, NE

### Relocation Assistance

#### 506 - Advanced Business Relocation Assistance







506 Advanced Business Relocation Assistance 02.19.09 Austin, TX

# EDUCATION



# January, 2009

Happy  
New  
Year!

Sun	Mon	Tue	Wed	Thu	Fri	Sat	Schedule of Events
			1	2	3		• New Years Day
4	5	6	7	8	9	10	• January Board Meeting • Federal Agency Update • Newsletter Articles Due
11	12	13	14	15	16	17	
104 & 203 	401 			215 			
18	19	20	21	22	23	24	Number and  Denotes Education (see previous page for further descriptions).
			403 				
25	26	27	28	29	30	31	
							

**Federal Agency Update**

A Public Real Estate Symposium

Presented by the Appraisal Institute and the International Right of Way Association

## Join Federal, State and Local Government Officials for 3 Days of Education and Networking!

**January 13-15, 2009  
Las Vegas, NV**

***With billions of dollars tied to your public projects, keeping up  
with regulatory changes is critical.***

Join officials from the FTA, FHWA, USACE, FAA, HUD, EPA and a host of other industry experts as they address challenges impacting today's right of way projects.

**Some sessions topics include:**

- **Appraising Real Estate Damages • Accommodating Utilities in Right of Way**
  - **Legislative and Judicial Update • Acquisition of Foreclosed Property**
  - **Section 18 Relocation for Public Housing Valuating Green Properties**

***Bonus for AI and IRWA Members:***

AI members can receive up to 24 hours of AI continuing education credit, and IRWA members can receive up to 24 hours of IRWA education credit.



## IRWA Chapter History

To commemorate IRWA's 75th Anniversary in 2009, local Chapters are collecting history to submit to their websites, newsletter and the IRWA website. We encourage you to share your story by sending something to Mark Kellar so he can summarize and submit to the IRWA and for the Chapter 28 website as well as future newsletter articles. *(Please keep the information clear, concise and interesting!)*

To maintain consistency, here are the 10 items to include in your IRWA Chapter History:

- 1) Chapter Name and Number
- 2) Who founded the Chapter and what year?
- 3) Who was the first President?
- 4) Who was the first female member?
- 5) Who was the first female President?
- 6) Were any Chapter members a Balfour recipient or International President?
- 7) Does the Chapter offer special programs for members like scholarships or awards?
- 8) Can the Chapter identify the top 3 Infrastructure Projects (over its lifetime), or is there one project in particular it would like to highlight?
- 9) Have the right of way disciplines most practiced in the Chapter changed over the years (decades), and if so, how? Can a chart or graph be used to show these shifts?
- 10) Can you collect early Chapter pictures and recent ones to show the differences?

### Capture the Early Years!

All Chapter stories/history snapshots should be submitted to: [Mark.Keller@srpnet.com](mailto:Mark.Keller@srpnet.com)



# LIGHT RAIL OPEN FOR BUSINESS



**\$1.25 PER RIDE**

**\$2.50 ALL DAY**



**Photos courtesy of  
Roger Ottaway,  
Move Cost Specialist.**

**"Thanks Roger"!**

# 2009 Annual Conference Location



**Indianapolis, Indiana**

**June 28 - July 1**

**Earn Recertification Credit**

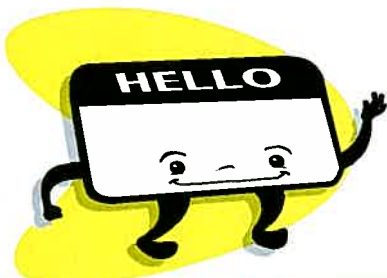
Did you know that IRWA members can get up to 24 hours of SR/WA Designation and Certification Program recertification credit for attendance at the Annual International Education Conference?

IRWA Members may obtain up to 24 hours of recertification credit if registered for the full conference. Daily registrants will receive 8 hours per day of registration.

**IMPORTANT:** No recertification approval form is necessary.

The Professional Development Department at International Headquarters retains a list of registered Conference attendees for recertification on file.

Please keep copies of all registration confirmation forms to submit with your recertification paperwork.



# Announcements!

**NEW LAW TAKE EFFECTS THIS COMING YEAR  
takes effect Jan 1, 2009.**

Any license plate holder or cover that prevents the license plate from being clearly legible is in violation of this new law.

A.R.S. 28-2354(B.)

[http://www.azdot.gov/mvd/WhatsNew/  
whatsnew\\_2009.asp#LicensePlateHolderLaw](http://www.azdot.gov/mvd/WhatsNew/whatsnew_2009.asp#LicensePlateHolderLaw)

State law requires that the state name at the top of Arizona license plates must be visible. If the license plate frame holder covers the name Arizona you'll receive from the nice police officer, a \$130.00 ticket!



Anyone who came to the Education Seminar in September and received one of the Chapter 28 flash drives should contact Kathie Sholly, President Elect, to receive the battery to operate the flash.

Please email Kathie at  
[President@irwachapter28.org](mailto:President@irwachapter28.org)  
or call her to make other arrangements at  
623-930-3652.

