

PART XI: LITIGATION SURVEYS

11.1 Definition

Litigation Surveys are a special category of surveys whose time lines, requirements and accuracy standards may vary. An organization of the size and complexity of MDOT may require such surveys for a number of reasons from right of way boundary resolution to recreation of accident sites. The survey request may be generated from any of several sources.

When performing a litigation survey, the surveyor must be keenly aware of his role as a fact finder and must differentiate this role from that of the attorney and from that of the courts. The surveyor should assume that he will be called upon to testify as an expert witness. The surveyor must realize that any documents he submits will be reviewed by lay people who possess varying degrees of survey knowledge and understanding. The surveyor must therefore be able to communicate in a manner that is accurate, brief, clear, concise and easily understood.

11.1.1 The Surveyor as Fact Finder

The surveyor's role is to independently gather necessary facts, evaluate those facts and then arrive at conclusions of fact. The surveyor is not an advocate nor does he draw conclusions of law. The attorney is the advocate presenting the court with arguments in favor of his client's position. "The court interprets the law and applies the law to the facts"³⁰.

11.1.2 The Surveyor as Expert Witness

The surveyor may be called upon to act as an expert witness. Black's Law Dictionary defines an expert witness as "One who by reason of education or specialized experience possesses superior knowledge respecting a subject about which persons having no particular training are incapable of forming an accurate opinion or deducing correct conclusions."³¹ When acting as an expert witness the surveyor must stick to the facts and be careful of wandering away from the specific topic at hand or of making statements relative to areas in which he may have little or no expertise.

11.1.3 The Surveyor as Communicator

The surveyor by definition is a communicator who communicates orally in the case of acting as an expert witness, graphically as in the case of preparing charts and maps, physically as in the case of placing

stakes or monuments and in writing as in the case of preparing contracts or written survey reports. In all cases, but especially with litigation surveys, the surveyor must avoid highly technical terms, “bureaucratese” and “official speak”. His reports or testimony may be critical elements in deciding the outcome of a case. His communication should be relevant, focused and contain enough information to support his interpretations. Paragraphs and sentences should be coherent and efficient. Words should be simple and exact. Visuals should be pertinent and organized.

11.2 Coordination

Due to the unique nature of the litigation survey, direct coordination among the field surveyor, the MDOT survey project manager and the State of Michigan Attorney General’s office is critical. The surveyor must have a thorough understanding of the purpose of the litigation survey, the detail required, the standard of accuracy necessary and knowledge of who the constituents are.

11.3 Deliverables

Deliverables for a litigation survey will vary depending upon its nature. Each deliverable must be thoroughly reviewed for completeness and correctness. All writings must be accurate, brief, clear and concise with particular attention paid to the precise legal meanings of words. The surveyor should avoid technical jargon and language not understood by a layman.

Notes:

30. Curtis M. Brown, Walter G. Robillard, and Donald A. Wilson; *Brown’s Boundary Control and Legal Principles, 4th Edition*; John Wiley and Sons, Inc.; New York, New York; 1995; p. 366.

31. *Black’s Law Dictionary, 5th Edition*; West Publishing Company; St. Paul, Minnesota; 1979; p. 519.