HOW TO USE JUDICIAL LANDMARKS
By David J. Meyers

Minnesota law allows the placement of Judicial Landmarks to permanently mark property boundaries. This can be a great help to landowners and their surveyor to permanently correct a problem description. It has been my experience that most surveyors know of Judicial Landmarks ("JLM"), but few understand the process to place the markers.

A JLM may be placed as part of a Torrens Action or in an Action to Determine Adverse Claims to abstract property, most often called a Quiet Title lawsuit. The procedure is similar for both, and is outlined in Minn. Stat. § 559.25 (see attached).

First, an accurate survey and description must be prepared. After the lawyer, surveyor and owner all agree on the boundary, the matter needs to go to Court either through an Application to Register Title or a Proceeding Subsequent (Torrens) or as part of a Summons and Complaint lawsuit for abstract land. The pleadings or Application to the Court must state that the owner intends to place the JLM.

The lawyer needs to serve all of the surrounding property owners, including all holders of all liens. The Court needs to have jurisdiction over everyone who has any claim to the surrounding land in order to finally place the JLM monument. Failure to include anyone opens the JLM to a later challenge.

In some cases, it may only be necessary to only set the JLM on one or two boundary lines. This is infrequent, but in that case, only the owners and lienholders of the land with the boundaries to be set needs to be notified and made a part of the lawsuit. I generally recommend placing JLMs around the entire boundary, since the extra cost is usually minimal.

As a practice tip, I find it very helpful to have the surveyor first talk to the neighbors of the adjoining properties and explain what the landowner is trying to do. It may be that a compromise can be reached on the boundary between the adjoining landowners, which makes the Court case much simpler. I prefer to have the surveyor make the initial contact with the neighbor, since lawyers are generally thought of as advocates for one party. This is a service that surveyors can provide.

I also have the surveyor meet with the government road authority to make certain there is no encroachment of the right-of-way. Again, this can prevent unnecessary arguments.

After all parties are served, and all disputes are resolved through settlement or trial, the Court issues an Interlocutory Order (see attached). This is sometimes confusing to the surveyor. **THE SURVEYOR MAY NOT SET A JLM UNTIL ORDERED BY THE COURT**. The Court must first issue the Interlocutory Order finding that all Defendants (adjacent owners) are in default, and that the Plaintiff (property owner) owns the property described in the Complaint.

After the Court issues the Interlocutory Order authorizing the surveyor to place the JLM, the surveyor must set the monuments. The surveyor then prepares a map showing the placement of

the JLMs, which is filed with the Court. The Judge then signs the final Order, which states that the Plaintiff owns the land, the legal description is confirmed and that the boundaries of that description are marked with the JLM. Once the appeal time has passed (60 days), the boundary may never again be challenged.

Here are a few tips that surveyors should keep in mind. First, there is no standard JLM monument called out by statute. I insist on using a three or four foot cast iron monument, with a tapered top. I require placement of at least four JLMs. I am convinced that over the next many years, two of the JLMs will be lost, but with tapered tops, there is a chance that the remainder of the base of the JLM will be found. Setting four, even if two are lost, means that two might remain.

The cast iron monuments are more expensive, but a good survey and a Torrens or Quiet Title probably involves $5,000.00 to $10,000.00 in legal fees and survey costs. Why skimp on the Judicial Marker if that much cost has gone into the case?

Minn. Stat. § 559.25 states that the marker must state "Judicial Landmark" on top. I like to have the surveyor's license number also stamped onto the marker (see attached).

When marking the boundary of a right-of-way or other area that might be disturbed keep in mind you do not have to set the JLM at the corner. It may be set on line. Offsetting the JLM to keep out of a wetland, away from a right-of-way or other area where you know there will be construction, might help preserve the JLM.

Setting a JLM in a Torrens case is about as good as title gets in Minnesota. Claims of adverse possession and prescriptive easements are not allowed against a Torrens title. If the Court has placed the Judicial Monuments with a Torrens title, the owner is forever, assured that no one will ever successfully encroach upon his boundary.

In my opinion, a JLM may be placed at a government corner. But, that does not mean that the JLM has marked the government corner. The government corner is where the original government surveyor placed it. A JLM at a government corner marks the boundary of the parcel in question, and it may aid other surveyors in locating the corner, but it is not the absolute guaranteed government corner.

Sometimes a JLM is placed in a wrong location. When that happens, the surveyor may not move it once the Court has issued its judgment. Instead, the lawyer should go back to Court and have the Judge issue an Amended Order to correct the location of the JLM. I have also used an Affidavit of the surveyor stating that the JLM was placed in error, showing the correct location bearings.

When the JLM survey is filed with the Court, it is also a good idea to file it with the County Recorder or County Registrar of Titles.

Finally, when a JLM is set, I prefer to use an amended or corrected description including the JLM. For example, a distance in bearing may give direction "to a JLM" or "through a JLM" (see attached).

It is my opinion that a Quiet Title action or even a Torrens action to correct a boundary, without also placing a JLM, is a waste of everyone's time. If the boundary is in question, it means that prior and current surveyors do not agree. Lawyers and surveyors may complete a Quiet Title action only to be challenged later when another surveyor disagrees with the corner location. By placing a JLM, even if a future surveyor would disagree (and I do not know why that would happen) the boundary markers are set and are beyond challenge.

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NOTE: The Court Orders used with this article have been condensed. Orders issued in a Torrens or Quiet Title case would include additional findings and conclusions.

559.25 JUDGMENT; LANDMARKS.

The judgment shall locate and define the boundary lines involved by reference to well-known permanent landmarks, and, if it shall be deemed for the interest of the parties, after the entry of judgment, the court may direct a competent surveyor to establish a permanent stone or iron landmark in accordance with the judgment, from which future surveys of the land embraced in the judgment shall be made. Such landmarks shall have distinctly cut or marked thereon "Judicial Landmark." The surveyor shall make report to the court, and in the report shall accurately describe the landmark so erected, and define its location as nearly as practicable.

TORRENS

Case Type: 14

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF <> — <> JUDICIAL DISTRICT

In the Matter of the Application of:	)	
	)	Court File No. <>
Applicant<s>,	)	
	)	**ORDER AND DECREE OF**
	)	**REGISTRATION AND AN**
	)	**ORDER ESTABLISHING AND**
	)	**FIXING BOUNDARIES AND**
vs.	)	**ESTABLISHMENT OF**
Defendant<s>.	)	**JUDICIAL LANDMARKS**

(Other Findings and Conclusions)

1. That Judicial Landmarks have been placed pursuant to the <date>, Interlocutory Order of this Court, and that the placement of those Judicial Landmarks is shown on the <date> survey by <surveyor name> in the Court file and made a part hereof.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows: (Other matters as needed)

1. That the boundaries of the land described herein have been determined by placement of Judicial Monuments as described in the <date> Certificate of Survey filed in this matter by <surveyor name>, which survey is made a part of the Findings and Decree hereof. The Certificate of Survey shall also be filed with the Registrar of Titles, at the time of the filing of this Order, and the Certificate of Title shall state: "That the boundaries are registered and Judicial Monuments set per the survey filed in the office of the Registrar of Titles, and with the District Court."

BY THE COURT:

_____

Judge of District Court

TORRENS

Case Type: 14

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF <> — <> JUDICIAL DISTRICT

In the Matter of the Application of:	)	
	)	
<>:	)	Court File No. <>
	)	
See attached **Exhibit A**,	)	
	)	**INTERLOCUTORY ORDER**
Applicant<s>,	)	**DETERMINING BOUNDARIES**
	)	
vs.	)	
	)	
Defendant<s>.	)	

(Other Orders)

IT IS THEREFORE ORDERED, that the Applicant proceed to have said Surveyors mark said boundary lines by placing Judicial Landmarks and that a plat of said survey showing the location of each said Judicial Landmarks, certified as to location thereof, be then filed herein.

Subject also to the Order of this Court establishing and fixing boundaries to said land and Judicial Landmarks.

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Judge of District Court

ABSTRACT TITLE

	Case Type: Other Civil (Quiet Title)
STATE OF MINNESOTA	DISTRICT COURT
COUNTY OF <>	<> JUDICIAL DISTRICT

<>,

Plaintiff<s>,

Court File No. <>

vs.

<>,

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER ESTABLISHING THE PLACEMENT OF JUDICIAL LANDMARKS, ORDER FOR JUDGMENT AND JUDGMENT

Defendant<s>.

FINDINGS OF FACT

<Findings as needed>

1. Plaintiff has had the boundaries determined and established with Judicial Landmarks as provided in Minn. Stat. § 559.25.

2. Plaintiff has had the land involved surveyed by <surveyor name>, as evidenced by a Plat of Survey dated <date>, and attached hereto showing the boundary lines of said Property claimed by Plaintiff, and all boundary lines are as shown on the Plat of Survey.

ORDER

<Conclusions and other Orders as needed>

1. That the boundaries of the Property have been determined by placement of Judicial Monuments as described in the <date> Certificate of Survey filed in this matter by <surveyor name>, which survey is attached to and made a part of this Order and Judgment.

_____

Judge of the District Court

ABSTRACT TITLE

STATE OF MINNESOTA	Case Type: Other Civil (Quiet Title) DISTRICT COURT
COUNTY OF <>	<> JUDICIAL DISTRICT
<>, Plaintiff<s>,	Court File No. <>
vs. <>, Defendant<s>.	**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INTERLOCUTORY ORDER**

FINDINGS OF FACT

(Findings as needed)

1. Plaintiff is entitled to have the boundaries determined and established with Judicial Landmarks, as provided in Minn. Stat. § 559.25.

2. Plaintiff has had the land involved surveyed by <surveyor name>, as evidence by a Plat of Survey dated <date>, and attached hereto showing the boundary lines of said Property claimed by Plaintiff, and all boundary lines are as shown on the Plat of Survey.

ORDER

1. That Plaintiff proceed to have its surveyor mark the boundaries by placing Judicial Landmarks and that a plat of said survey showing the location of each said Judicial Landmark, certified as to the location thereof, be filed herein.

Dated: _____, 20<>

_____
<Judge>, Judge of District Court