

MINUTES

SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts
450 South State Street
Salt Lake City, Utah 84114

Wednesday, September 3, 2014
12:00 p.m. to 1:30 p.m.
Judicial Council Room

PRESENT

Judge Denise Lindberg, Chair
Alison Adams-Perlac, Staff
Professor Jensie Anderson
Judge James Blanch
Mark Field
Sandi Johnson
Judge Brendan McCullagh
Thomas Pedersen, Intern
John West
Scott Young

EXCUSED

Professor Jenny Andrus
Linda Jones
Karen Klucznik
Jesse Nix
Judge Michael Westfall

1. Welcome and Approval of Minutes

Judge Denise Lindberg

Judge Lindberg welcomed everyone to the meeting.
Judge Blanch moved to approve the minutes from the previous meeting. Mr. Field seconded the motion and it passed unanimously.

2. Committee Status Update

Alison Adams-Perlac

Ms. Adams-Perlac stated that the Judicial Council has considered a proposal to move the Model Utah Jury Instructions Committees out from under the Supreme Court's oversight so that they are standing committees of the Judicial Council. She stated that the Judicial Council approved the proposal in concept, and that the Policy and Planning Committee are working on rules that outline the change.

She stated that the change would not change very much how the committee operates on a month to month basis, but that there may be changes. For example, there is a proposal to open the instructions for public comment. She stated that there would likely be term limits imposed when the committees become standing committees of the Judicial Council.

3. Proposed Rule URCrP 19

Judge Brendan McCullagh

Judge McCullagh discussed proposed rule URCrP 19. He stated that he sits on the Rules of Criminal Procedure Committee. He stated that there is jury information in URCrP 17, 18, and 19. He stated that the Committee is working to clean up those rules. He stated that he drafted the rule 19 proposal and recommended that the MUJI Criminal Committee review the proposal.

Judge McCullagh stated that Mr. West suggested that the proposal is too complicated. Judge McCullagh stated that throughout the rule includes “unless the court orders otherwise” which will allow for some flexibility. However, Judge McCullagh stated that we need a structure for how jury instructions are given. He stated that proposal only requires that a copy of the instructions be given to each juror if the jury instructions are given at the beginning of the trial. He stated that the rule is not meant to change policy, but to clean up process.

Judge Lindberg asked Mr. West to address his concerns regarding submitting them early. Mr. West stated that for practitioners, jury instructions are a last minute issue. Judge Lindberg stated that it is helpful for judges to have them early. Judge Blanch stated that he prefers to have the jury instructions in electronic format. Mr. West asked whether documents that are filed electronically can be manipulated. Judges Blanch, Lindberg, and McCullagh agreed that they could not be, and that a Word document would be necessary for instructions to be edited.

Judge Blanch asked the practitioners whether they can contact judicial assistants to send proposed jury instructions electronically. Ms. Johnson stated that when efilng is set up as a rich text format, efiled documents will be able to be manipulated. Ms. Johnson stated that some judges think it is an ex parte communication to send jury instructions by email, even when the other parties are copied on the email.

Judge McCullagh stated that the rule presupposes that the parties will meet with the judge to discuss jury instructions before the trial. He also stated that all of the time periods will be 7, 14, 21, and 28 days since the Rules of Criminal Procedure Committee will be adopting those timeframes in line with the Rules of Civil Procedure.

Judge McCullagh stated that the Rules of Criminal Procedure Committee will meet in October to discuss the rule, and this committee can refer suggestions or comments on the rule to him. Mr. Field asked what parts “shall apply”. Judge McCullagh requested that Mr. Field email him so that he can determine whether he nested the rule correctly.

4. Table of Sexual Offense Instructions

Committee

Ms. Adams-Perlac stated that she included the table of sexual offenses so that the committee can be aware of its progress on the sexual offense jury instructions.

5. SVF Aggravated Sexual Abuse of a Child

Committee

Ms. Adams-Perlac stated that the committee had previously approved the special verdict form, but had asked her to separate out the offenses so that they were not grouped together. She stated that the special verdict form needs the committee’s approval as to form.

Ms. Johnson moved to approve the Aggravated Sexual Abuse of a Child Special Verdict Form as to form. Judge Blanch seconded the motion and it passed unanimously.

6. CR 1623 Serious Bodily Injury

Committee

The committee discussed the Serious Bodily Injury Instruction. Ms. Johnson stated that object rape in the first line needs a bracket added. Ms. Lindberg stated that the committee note regarding brackets needs to be added.

Ms. Johnson questioned where this instruction would be used. Ms. Adams-Perlac stated that the Sexual Abuse of a Child statute discusses “serious bodily injury” and this instruction would coincide with that. Ms. Johnson asked whether this goes to a sentencing issue. Ms. Adams-Perlac stated that it is a sentencing issue. Ms. Johnson stated that she does not think this instruction is helpful.

Judge McCullagh stated that serious bodily injury should be addressed through another special verdict form. Ms. Johnson stated that she thinks the instruction should include the first paragraph and then include the statutory definition of “serious bodily injury.” She then stated that the instruction should be given to the jury with the special verdict form.

The committee amended the instruction to read as follows:

CR 1623 Serious Bodily Injury. (Reading Level 20.7) Approved

If you find the defendant guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child] [as charged in Count ____], you then must determine whether the defendant, in the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child], caused serious bodily injury to another.

~~To find the defendant has caused serious bodily injury to another, you must find beyond a reasonable doubt, based on the evidence, each of the following:~~

- ~~1. The defendant is guilty of [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child]; and~~
- ~~2. In the course of committing [Rape] [Rape of a Child] [Object Rape] [Object Rape of a Child] [Sodomy] [Sodomy on a Child] [Forcible Sexual Abuse] [Aggravated Sexual Abuse of a Child];~~
- ~~3. The defendant, (DEFENDANT’S NAME) caused serious bodily injury to another.~~

~~After you carefully consider all of the evidence in this case, if you are convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant caused serious bodily injury during the commission of the offense. On the other hand, if you are not convinced that each and every element has been proven beyond a reasonable doubt, then you must find the defendant did not cause serious bodily injury during the commission of the offense.~~

“Serious bodily injury” means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

References

Utah Code § 76-1-601.

Committee Notes

This instruction contains bracketed language which suggests optional language. Please review and edit before finalizing the instruction.

Judge Blanch moved to approve Instruction CR 1623 Serious Bodily Injury as amended. Ms. Johnson seconded the motion and it passed unanimously.

7. SVF Serious Bodily Injury

Committee

The committee discussed that no changes need to be made to the Serious Bodily Injury Special Verdict Form.

Judge McCullagh moved to approved the Serious Bodily Injury Special Verdict Form. Judge Blanch seconded the motion and it passed unanimously.

8. Other Business

Judge Lindberg stated that she will be retiring at the end of the year. She stated that Judge Blanch has expressed a willingness to chair the committee. Judge Blanch stated that he would be happy to do it, but that he would also be fine if a practitioner chaired it. Ms. Adams-Perlac stated that the Management Committee would need to approve the appointment once the rule has been approved, but that she does not foresee any problems with it.

Mr. West asked inquired regarding the term limits. Ms. Adams-Perlac stated that the term limits of Judicial Council standing committees would apply. The term limits are two 3-year terms, with a third term for if the member becomes chair. Ms. Adams-Perlac stated that once the rules are passed she can inquire into who has been on the committee for a long time and wants to get off, and start rotating members of that way.

Judge Lindberg stated that the committee has talked about reinitiating subcommittees and having members of the committee chair those subcommittees. She stated that Mr. Field was to chair the subcommittee on homicides. She stated that Judge McCullagh was to chair a DUI subcommittee. Judge McCullagh said he had brought some DUI instructions to the committee previously, but he will bring them again.

Judge Lindberg stated that the bulk of the cases in the courts involve drugs, assault, DV, and DUIs and that is where the committee’s focus should be. Judge Lindberg stated that Judge Taylor’s committee has done a lot of work on drugs, but the statute changed, so those instructions were tabled. Judge Lindberg asked that the committee members come back to the next meeting with topics they are willing to address by chairing a subcommittee.

Ms. Adams-Perlac stated that she will have her secretary work on making a list of the instructions she has in the queue so that the subcommittees will have a starting point.

Judge Lindberg stated that she has changed her view and that the committee should only focus on instructions that are high priority, rather than on addressing every single offense under a part of the Utah Code.

9. Adjourn

The meeting was adjourned at 1:04 p.m. The next meeting will be held on Wednesday, October 1, 2014.