

MINUTES

Advisory Committee on Model Civil Jury Instructions

August 9, 2004

4:00 p.m.

Present: John L. Young (chair), Honorable William W. Barrett, Jr., Francis J. Carney, Ralph L. Dewsnup, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Stephen B. Nebeker, Paul M. Simmons, David E. West, Jonathan Jemming

Excused: Timothy M. Shea

1. *Minutes*. The committee approved the minutes of the June 14, 2004, meeting.
2. *Draft Preliminary and General Instructions*. The committee continued its review of the draft instructions prepared by Mr. Ferguson's subcommittee:

- a. *02.21, Multiple Plaintiffs, and 02.22, Multiple Defendants*. Mr. Carney questioned the need for the instructions. Mr. Fowler pointed out that an instruction on multiple parties may be necessary because the treatment of multiple parties may vary, depending, for example, on whether or not one is vicariously liable for another. Mr. Young and Mr. West suggested that any needed instructions could be covered in the instructions on the special verdict form and in the form itself. Mr. Jemming suggested the instruction should be a preliminary instruction. At Mr. Dewsnup's suggestion, the committee decided to rewrite the instruction as follows and make it part of the preliminary instructions:

“Although there are multiple parties involved in this case, each party is entitled to have its claims and defenses considered on their own merits.”

- b. *02.23. Discontinuance as to Some Defendants*. Mr. Carney thought the tone of the instruction was condescending and that the instruction would only pique the jurors' interest. After some discussion, the committee decided to instruct the court and counsel to craft an instruction telling the jury that a party is no longer involved in the case and giving the reason. A general instruction could be included as a guide, perhaps with several alternative explanations as examples.

- c. *02.24. Settling Defendants in Multi-party Cases*. Mr. Dewsnup felt that the last two sentences of the proposed instruction were argumentative. Mr. Young felt that the instruction needed to be more specific about what portions of the settlement should be disclosed to the jury. Mr. Humpherys stated that the instruction should tell the jury both what it can and cannot do with information about a partial settlement. Mr. Dewsnup offered a suggested rewrite of the instruction. Mr. Carney reviewed the equivalent California instruction, CACI 217.

Mr. Ferguson will rewrite the instruction in light of Mr. Dewsnup's suggested revisions and CACI 217, after making sure that CACI 217 is consistent with *Slusher v. Ospital*, 777 P.2d 437 (Utah 1989).

d. *02.25. Jurors to Deliberate and Agree If Possible.* Mr. Carney noted that the instruction overlaps instruction 2.7.

Mr. Ferguson will combine instructions 2.7 and 02.25.

e. *2.5. Duty of Lawyers.* The subcommittee had previously rejected former MUJI 2.5 in favor of revised MUJI 1.1. Mr. Carney suggested that former MUJI 2.5 was not adequately covered in revised MUJI 1.1 and was needed.

f. *02.26. Resort to Chance.* The committee simplified the instruction by dropping "speculate, draw lots, or" in line 28 and rewriting the last paragraph as follows:

If you decide that a party is entitled to recover, you must then decide the amount of money to be awarded to that party. Each of you should express your own independent judgment as to what the amount should be. It is your duty to thoughtfully consider the amounts suggested, evaluate them according to these instructions and the evidence and, after due consideration, come to an agreement on the amount, if any, to be awarded. It is unlawful for you to agree in advance to average the independent estimate of each juror.

f. *02.27. Agreement on Special Interrogatories.* Judge Barrett and Mr. Humpherys suggested dropping the last two lines of the first paragraph. Mr. Dewsnup suggested dropping the second paragraph as well. After some discussion, the committee agreed that it needed to revisit the placement of the instructions on burden of proof.

3. *Next Meeting.* The next meeting will be Monday, September 13, 2004, at 4:00 p.m.

The meeting concluded at 6:00 p.m.