

**MINUTES**

**STANDING COMMITTEE ON  
THE MODEL UTAH CRIMINAL JURY INSTRUCTIONS**

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

Wednesday, January 4, 2017  
12:00 p.m. to 1:30 p.m.  
Judicial Council Room

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**PRESENT**

Judge James Blanch, Chair  
Keisa Williams, Staff  
Mark Field  
Sandi Johnson  
Linda Jones  
Karen Klucznik  
Judge Brendon McCullagh  
Steve Nelson  
Jesse Nix  
Nathan Phelps  
Scott Young

**EXCUSED**

David Perry  
Judge Michael Westfall

**1. Welcome**

**Judge Blanch**

Judge Blanch welcomed everyone to the meeting and each member introduced themselves.

*Ms. Jones moved to approve the minutes from the November 2016 meeting. Mr. Phelps seconded the motion and it passed unanimously.*

**2. Proposed Amendments**

**Committee**

Ms. Jones stated that certain instructions needed to be updated. She offered additional language to ensure compliance with Rule 19(f) of the Rules of Criminal Procedure.

**(a) CR105 Role of Judge, Jury, and Lawyers [Introduction]**

**CR105 Role of Judge, Jury and Lawyers [Introduction].**

All of us, judge, jury and lawyers, are officers of the court and have different roles during the trial:

- As the judge, I will supervise the trial, decide legal issues, and instruct you on the law.
- As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.
- The lawyers will present evidence and try to persuade you to decide the case in one way or the other.

Neither the lawyers nor I decide the case. That is your role. You are the exclusive judges of all questions of fact. Do not be influenced by what you think our opinions might be. Make your decision based on the law given in my instructions and on the evidence presented in court.

*Ms. Klucznik moved to approve the proposed modifications to the instruction. Mr. Young seconded the motion and it passed unanimously.*

### **(b) CR202 Juror Duties [Closing]**

#### **CR202 Juror Duties [Closing].**

You have two main duties as jurors.

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine. You are the exclusive judges of all questions of fact.

The second duty is to take the law I give you in the instructions, apply it to the facts, and decide if the prosecution has proved the defendant guilty beyond a reasonable doubt.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before trial, any instructions I may have given you during the trial, and these instructions. All the instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

Perform your duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. [You must also not let yourselves be influenced by public opinion.]

*Ms. Klucznik moved to approve the proposed modifications to the instruction. Mr. Young seconded the motion and it passed unanimously.*

### **(c) CR109B Further admonition about electronic devices**

Ms. Jones stated that she spoke to judges who feel that the instruction is outdated. She presented changes to the committee.

Ms. Johnson suggested keeping the instruction general to ensure that the instruction remains relevant with changing technology. Judge Blanch suggested “electronic devices such as

phones, tablets, or computers.” Judge McCullagh stated that the instruction should be readable because the instructions are read aloud.

**CR109B Further admonition about electronic devices [Introduction].**

Jurors have caused serious problems during trials by using electronic devices – such as phones, tablets, or computers - to research issues or share information about a case. You may be tempted to use these devices to investigate the case or to share your thoughts about the trial with others. Don’t. While you are serving as a juror, you must not use electronic devices for these purposes, just as you must not read or listen to any sources outside the courtroom about the case or talk to others about it.

You violate your oath as a juror if you conduct your own investigation or if you communicate about this trial with others, and you may face serious personal consequences if you do. Let me be clear: do not “Google” the parties, witnesses, issues, or counsel; do not “Tweet” or text about the trial; do not use electronic devices to gather or send information on the case; do not post updates about the trial on Facebook pages; do not use Wikipedia or other internet information sources, etc. Even using something as seemingly innocent as “Google Maps” or a dictionary to look up terms can result in a mistrial.

Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends on you reaching your decisions based on evidence presented to you in court and not on other sources of information.

Post-trial investigations are common. If improper activities are discovered, they will be brought to my attention, and the entire case might have to be retried at substantial cost.

*Ms. Jones moved to approve the proposed modifications to the instruction. Ms. Klucznik seconded the motion and it passed unanimously.*

**(d) Proposed Instruction: Items not admitted into evidence**

Judge Blanch presented an instruction for non-admitted exhibits and asked for comment from the committee. He stated that when he provides these instructions to juries, the juries submit fewer questions.

Ms. Johnson stated that some exhibits are allowed in the jury deliberation room, but some exhibits are not allowed. Ms. Jones was concerned that the instruction could be confusing because juries do not understand the difference between evidence and exhibits.

Judge Blanch stated juries do not appreciate the difficulty in answering jury questions. He stated the purpose of the instruction was limiting jury requests for non-evidence, such as transcripts, police reports, and other written or visual materials.

Judge McCullagh stated that the proposed last sentence should not be included because it is the subject of another instruction. Ms. Johnson suggested adding “audio materials.” Mr. Nelson suggested adding a committee note regarding what exhibits the jury may request. Ms. Johnson disagreed and stated that a committee note may be more confusing.

Judge Blanch suggested “Items not admitted into evidence” as a title of the instruction.

**CR206A. Items Not Admitted into Evidence – Closing.**

Transcripts, police reports, or other written, audio, or visual materials may have been referenced during the trial but not admitted as exhibits. It is common during deliberations for jurors to ask to review these materials or to have transcripts of what witnesses said during trial. These materials, other than what may have been admitted as exhibits, may not be requested as part of your deliberations.

*Ms. Johnson moved to approve the proposed instruction. Judge McCullagh seconded the motion and it passed unanimously.*

**(e) Proposed Instruction: Jury Questions During Deliberations – Closing**

Judge Blanch presented an instruction for jury questions and asked for comment from the committee. He stated that he has given the proposed instruction to juries without a problem. He stated that this instruction would help juries write notes in an organized way.

Ms. Jones suggested “Jury Questions During Deliberations – Closing” as a title of the instruction.

**CR217A. Jury Questions During Deliberations – Closing.**

These instructions should contain all the information you need to decide this case based upon the evidence. However, if you have a question or need clarification during deliberations, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question as appropriate.

*Ms. Klucznik moved to approve the proposed modifications to the instruction. Ms. Jones seconded the motion and it passed unanimously.*

**3. Other Business**

Judge Blanch noted that the committee has a backlog of proposed instructions completed by Judge Taylor’s subcommittee and asked for comment from the committee on how to speed up the process. The committee determined that they should address a few shorter instructions first and have a committee member review each set of instructions before they are presented at a meeting. The proposed instructions were divided among the members for review as follows:

- Assault, Burglary and Robbery – Ms. Johnson
- DUI, Traffic Statutes – Judge McCullagh
- Use of Force, Prisoner Offenses – Mr. Nelson
- Wildlife Crimes – Ms. Jones
- Murder – Ms. Klucznik and Mr. Fields

**4. Adjourn**

**Committee**

*The meeting was adjourned at 1:25 p.m. The next meeting is Wednesday, February 1, 2017.*