

**UTAH JUDICIAL COUNCIL  
STANDING COMMITTEE ON MODEL UTAH CRIMINAL JURY INSTRUCTIONS  
MEETING MINUTES**

Via Webex  
November 1<sup>st</sup>, 2023 – 12:00p.m. to 1:30p.m.

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		N/A
Hon. Brendan McCullagh	Justice Court Judge	•		
[Vacant]	Prosecutor	-	-	
Jennifer Andrus	Linguist/Communications Professor		•	<b>STAFF:</b> Bryson King
Hon. Linda Jones	Emeritus District Court Judge	•		
Sharla Dunroe	Defense Attorney		•	
Janet Lawrence	Defense Attorney	•		
Jeffrey Mann	Prosecutor	•		
Richard Pehrson	Prosecutor	•		
Dustin Parmley	Defense Attorney	•		
Freyja Johnson	Defense Attorney	•		
[Vacant]	Prosecutor	-	-	
Hon. Matthew Bates	District Court Judge		•	

**(1) WELCOME AND APPROVAL OF MINUTES:**

Judge Welch welcomed the committee to the meeting and reviews the last meeting’s minutes. Bryson King offers a correction to the minutes regarding the committee’s decision to offer a body-camera instruction and general adverse inference instruction. The minutes are corrected. Judge McCullagh moves to approve the minutes and Janet Lawrence seconds the motion. Without opposition, the minutes are approved. Judge Welch invites Bryson King to review the applicants for the two prosecutor vacancies on the Committee. Bryson King reviews the applicants with the Committee. Committee members will provide feedback regarding the applicants via email.

**(2) AGENDA ITEM 2: ADVERSE INFERENCE INSTRUCTION ON BODY-WORN CAMERAS**

Judge Welch then turns the Committee’s attention to CR416, adverse instruction on body-worn cameras. Dustin Parmely reviews the draft proposal with the Committee. Judge McCullagh addresses the intentional or reckless language in the instruction and proposes removing that language. The Committee agrees to remove the intentional or reckless language from the beginning of the instruction. Freya Johnson proposes broadening the language at the end of the instruction to align with case law that broadens the inference against an officer, which could go directly to the officer’s credibility as a whole. The committee agrees to modify the language in the end of the instruction to broaden the inference available against the officer, and based on Janet Lawrence’s suggestion, include a provision for the jury to determine the credibility of the officer and weight of the inference.

Richard Pehrson then suggests including a provision in the Committee Notes of the instruction that practitioners should present the issue of an adverse inference prior to trial. Judge Jones suggests the Criminal Procedure Committee modify its rules to require that a motion for an adverse inference be brought before trial. Judge Jones and Jeff Mann propose some language modifications to clean up the instruction. With those modifications, Judge Welch then requests a motion to approve the instruction. Dustin Parmley moves to approve with Judge McCullagh seconding that motion. Without opposition, the motion passes and the instruction will be published.

### **(3) AGENDA ITEM 3: GENERAL ADVERSE INSTRUCTION**

This item will be continued to the next meeting.

### **(4) AGENDA ITEM 4: DISCUSSION OF PUBLISHING INSTRUCTIONS FOR PUBLIC COMMENT**

Judge Welch invites the Committee to discuss procedures for publishing instructions for public comment. Bryson King reviews the current procedure for the Committee and reviews the MUJI Civil Committee's procedures, which are that once an instruction is published, they issue a notice via email to the Bar's listserv inviting public comment for a 30-day period. Judge Welch proposes that the Committee invite public comment immediately after instructions are approved. Judge McCullagh asks whether this process for public comment mirrors the Supreme Court Advisory Committees processes for public comment. Bryson King reviews the differences between the MUJI Committees' public comment process and the Supreme Court Committees' process. Judge Welch suggests when we publish instructions on the website, we include a note that the instruction is out for public comment, until the comment period ends and then it be removed. The Committee then discusses the timeline for public comment and deadline for the comment period on published instructions. Judge Welch then suggests that the Committee post for public comment all instructions approved by the Committee in 2023.

### **(5) ADJOURN**

The meeting adjourned at approximately 1:17p.m. The next meeting will be held December 6<sup>th</sup>, 2023 at 12:00p.m. in person at the Matheson Courthouse in Salt Lake City and via Webex for remote participants. remote participants.