

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

Via Webex  
December 6, 2023 – 12:00 p.m. to 1:30 p.m.

COMMITTEE MEMBER:	ROLE:	PRESENT	EXCUSED	GUESTS:
Hon. Teresa Welch	District Court Judge [Chair]	•		None
Hon. Brendan McCullagh	Justice Court Judge	•		
Jennifer Andrus	Linguist/Communications Professor		•	<b>STAFF:</b>
Hon. Linda Jones	Emeritus District Court Judge	•		Bryson King
Hon. Matthew Bates	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	•		
McKay Lewis	Prosecutor	•		
Nic Mills	Prosecutor	•		

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

Judge Welch welcomed the committee to the meeting and welcomed new members, McKay Lewis and Nic Mills. Judge Welch asked McKay and Nic to introduce themselves to the Committee. Following their introductions, the Committee reviewed the previous month’s minutes. Richard Pehrson moved to approve the minutes and Freya Johnson seconded the motion. Without opposition, the motion carries and the minutes are approved.

**(2) AGENDA ITEM 2: GENERAL ADVERSE INFERENCE INSTRUCTION**

Judge Welch then asked the Committee to discuss a proposed general adverse inference instruction. Utah has an adverse instruction, which the Committee has worked on, for body-worn cameras, but no other adverse inference instruction for criminal rules. Janet Lawrence then reviewed with the Committee a proposed general adverse inference instruction she volunteered to draft. Janet discusses the similarities and differences of this instruction with the civil spoliation instruction. Judge Welch invites Committee members to discuss when and how a general adverse inference instruction has been used in their practice. Richard Pehrson discusses his experience with such an instruction. Judge Jones also discusses existing case law that calls for a remedy in scenarios where an adverse instruction might be appropriate, but doesn’t reach as far as providing what that instruction should be. Freya Johnson also discusses how case law guides when an instruction should be given under due process considerations. Jeffrey Mann also discusses the different approaches and conclusions offered in the *Tiedeman* and *DeJesus* cases. Judge Welch then asks the Committee to discuss whether the Committee should begin the

process of developing a formal general adverse instruction, given the relative lack of guidance from the appellate courts in Utah on the subject. Judge McCullagh argues against the Committee providing a general adverse instruction given the lack of appellate guidance on the subject, while offering support for the idea that when the case is appropriate, parties could craft an instruction that fits the unique facts of their case. Judge Jones explains that other jurisdictions, including federal courts, have a general instruction available that differs in remedies, but could be used to craft Utah's instruction. McKay Lewis offers his insight on when an instruction could be given. The Committee continues its discussion on the practicality and timing of crafting the instruction, including pointing to the Utah Civil MUJI instructions on spoliation and other jurisdictions' instructions on adverse inferences and remedies. Judge Welch proposes that the Committee work on a general adverse instruction, without committing to finalizing and publishing such an instruction that would be made available to the public. Additional discussion ensues following that proposition. Judge Welch again proposes that the Committee continue to work on an instruction, while watching for appellate guidance on the subject if/when a case goes on appeal. Judge Welch asks whether there is a Committee member willing to take on the project of researching other jurisdictions' rules/laws on the topic. Janet Lawrence volunteers to take on the research project. Nic Mills also volunteers to assist Janet.

### **(3) AGENDA ITEM 3: REVIEW OF PUBLIC COMMENTS ON PUBLISHED RULES**

Following that discussion, the Committee turned its attention to published rules. Following the closure of the comment period, no member of the public commented on the published rules. Without public comments to review, the Committee turns its attention to future projects.

### **(4) AGENDA ITEM 4: DISCUSSION OF FUTURE PROJECTS**

McKay Lewis then asks whether the Committee has a goal for elements instructions on existing offenses, specifically DUI cases. Judge Welch reviews how the Committee chooses its projects. Judge McCullagh and McKay Lewis discuss the possibility of a DUI refusal instruction for the Committee to consider at a future meeting. McKay Lewis also offers to draft an instruction on Negligently Operating a Vehicle Resulting in Death/Bodily Injury.

### **(5) ADJOURN**

The Committee reviews its meeting schedule and cancels the July meeting due to the holiday. The meeting adjourned at approximately 1:06 p.m. The next meeting will be held on February 7th, 2024, starting at 12:00 noon.