

MINUTES

Advisory Committee on Model Civil Jury Instructions

December 12, 2022

4:00 p.m.

Present: Judge Kent Holmberg, Lauren A. Shurman, Alyson McAllister, William Eggington, Ruth A. Shapiro, William Eggington, Douglas G. Mortensen, Randy Andrus, Mark Morris, Samantha Slark, Ricky Shelton, Adam D. Wentz, Jace Willard (staff).

Also present: Kade Olsen

Excused: Judge Keith A. Kelly, Stacy Haacke (staff).

1. *Welcome.*

Lauren Shurman welcomed the Committee.

2. *Approval of Minutes.*

October 3, 2022 meeting minutes approved.

3. *CV1605/1607 – Defamation – further explanation as to public comment.*

- Kade Olsen joined the meeting and explained his public comment regarding CV1605. Mr. Olsen explained that he spoke with David Reymann who assisted in drafting the instruction and, upon reflection, suggested that the committee modify 1607 rather than 1605. He suggested inserting the following language immediately before the last sentence of the currently drafted instruction: “When determining how a statement was ‘actually understood,’ you should consider how the statement would have been reasonably understood by the persons who heard or read it.”
- William Eggington discussed the evolution of the meaning of the word “reasonable” and how it has changed over the years. Raised possibility that a judge might understand the meaning of the word one way and a jury a different way.
- Various committee members expressed their concern with the suggested revision to 1607 and asked clarifying questions to Mr. Olsen.
- Judge Holmberg expressed his belief that the suggested language is not an incorrect statement of the law, but that it may not be necessary in the instruction either.
- Ms. Shurman suggested adding the subject language as a committee note rather than incorporate it into the instruction.

- Mr. Shelton motioned to add the language into the existing committee notes as suggested by Ms. Shurman. Judge Holmberg seconded. The motion carried with one opposition from Ms. Slark.

4. *Avoiding Bias Instructions – Update regarding 11/21/22 Judicial Council feedback; next steps.*

- The instruction was presented to the Judicial Council. It was neither approved nor disapproved. Judge Pettit recommended at that meeting to send the instruction to the Board of District Court Judges for final review. The other option would be for the Committee to simply publish the instruction for public comment. It is ultimately the Committee’s decision to make.
- Judge Holmberg suggested submitting it to the Board of District Court Judges to obtain a more comprehensive review of the instruction.
- Ms. Shurman will follow up with Judge Kelly to see if he will present the instruction to the Board of District Court Judges.

5. *New General Instruction – Pretrial Delay.*

- The Committee reviewed the most recent version of the instruction. There were no comments or recommended revisions.
- Mr. Andrus moved to approve. Doug seconded. The motion carried with no opposition.
- The Committee discussed where the instruction should be placed. Mr. Andrus suggested immediately after CV111B or CV135. Ms. Shurman suggested between CV116 and 117. Ms. Shurman also suggested it replace CV110, which has been removed. Ms. Slark suggested CV154.
- The Committee agreed to number the instruction CV154.

6. *CV632 Threshold – subcommittee or draft?*

- The Committee discussed whether a threshold instruction required a subcommittee or could be drafted by Ms. McAllister.
- The Committee agreed that Mr. Willard would obtain additional information from Ms. McAllister before the Committee would again address this question.

7. *Progress on Instruction Topics.*

Committee addressed upcoming queue. Dr. Eggington agreed to do additional research regarding the evolution of the word “reasonable” and distribute a relevant research article(s) to the Committee to review prior to next month’s meeting.

8. *Adjournment.*

The meeting concluded at 5:15 PM.