

MINUTES

Advisory Committee on Model Civil Jury Instructions

August 11, 2025

4:00-6:00 p.m.

Present: Bill Eggington, Stewart Harman, Michael D. Lichfield, Ben Lusty, John Macfarlane, Kara H. North, Jace Willard (staff).

Excused: Judge Brian D. Bolinder, Alyson McAllister, Ricky Shelton

Guests: None

1. Welcome and Approval of Minutes

Mr. Harman welcomed the Committee. The Minutes from the April meeting were approved.

2. Membership Update

Ms. North was welcomed as a new member of the Committee. Mr. Eggington has recently completed his first term of service on the Committee and his name will be submitted for reappointment. Notice will be circulated regarding the vacancy left by Mark Morris's recent completion of service on the Committee.

3. Public Comments re CV1730 and CV1731 Malicious Prosecution

New instructions regarding assault, battery, false imprisonment, and malicious prosecution were published in April. Public comments were only received regarding the malicious prosecution instructions. The Committee reviewed and discussed those comments. Mr. Lichfield expressed the view that the comments seem to suggest importing aspects of criminal law into the tort of malicious prosecution. He believes the language from the approved instruction appropriately tracks the case law.

The Committee discussed potentially changing the phrase "bringing a criminal to justice" to "bringing an offender to justice" or "bringing an alleged offender to justice." Mr. Eggington said that the words "criminal" and "offender" essentially mean the same thing, but that the term "offender" is so frequently used in conjunction with the word "sex" (i.e., "sex offender") that the jury may be more likely to take a negative view of the term "offender" than "criminal."

Following discussion, Mr. Macfarlane moved to make no changes to the published CV1730 instruction based on the public comments. Mr. Lichfield seconded. The motion carried unanimously.

Mr. Lichfield made a similar point as to the public comments made regarding CV1731. The instruction correctly reflects the case law and the comments mix criminal and tort law. Mr.

Macfarlane moved to make no changes to CV1731. Mr. Lichfield seconded. The motion passed unanimously.

4. CV331 Past and future medical expenses draft instruction

Mr. Macfarlane presented an instruction he drafted to reflect recently enacted legislation (Utah Code § 78B-3-405.5). He explained that the intent of the instruction is to prevent prejudice to either side resulting from the non-production of evidence regarding past medical expenses. He said that the new law prevents the jury from using past medical expenses as a baseline for deciding future damages, or for noneconomic damages. However, the jury should be given some explanation as to why they won't hear evidence regarding past medical expenses so that they won't simply assume there were none.

Members of the Committee suggested changes to some of the draft language. The word "spent" was omitted because an injured party does not always pay expenses incurred. Language was also changed to reflect that an award for future medical expenses or equipment may not always be sought.

Following discussion, Mr. Lusty said he would like to hear the views of certain absent members of the Committee, such as Ms. McAllister and Judge Bolinder. He moved to table the proposed instruction until the next meeting. Ms. North seconded and the motion was unanimously approved.

5. CV1740 Series - Abuse of process draft instructions

Mr. Willard explained that the draft abuse of process instructions were shared by David Reymann and that, with help from Westlaw AI, he located supporting references and added them to the draft. Mr. Eggington expressed concerns about some of the draft language being difficult for the layperson to understand. Others were in agreement. Mr. Lichfield volunteered to work on revising the draft to simplify the language and to bring it back next month. No objections were made.

Next meeting is September 8, 2025 at 4:00 p.m.