

MINUTES

Advisory Committee on Model Civil Jury Instructions
September 8, 2025
4:00-5:20 p.m.

Present: Alyson McAllister, Stewart Harman, John Macfarlane, Michael D. Lichfield,
Judge Brian D. Bolinder, Kara H. North, Jace Willard (staff), Clancey Henderson
(staff)

Excused: Ricky Shelton, Bill Eggington, Ben Lusty

Guests: None

1. Welcome and Approval of Minutes

Ms. McAllister welcomed the Committee. The Minutes from the August meeting were approved.

2. Membership Update

Mr. Henderson was welcomed as the Recording Secretary for the Committee.

3. CV331 Draft Instruction (past and future medical expenses)

The Committee continued its discussion on Draft Instruction CV331 (past and future medical expenses). Mr. Macfarlane provided a preliminary statement for context about the need for the Draft Instruction based on recent legislation (Utah Code § 78B-3-405.5). The Committee discussed revisions to the Draft Instruction. Judge Bolinder commented on use of “must” versus “shall” to be consistent with usage in other instructions. Ms. McAllister queried about the need to split the instruction into two parts to separately address past and future medical expenses. After comments, the Committee decided to preserve a single instruction and clarify the title of the Draft Instruction to signal that it addressed past-medical-expenses evidence. Ms. North expressed her view of need to change “determined” to more neutral language. The Committee discussed the use of brackets in the Draft Instruction to address optional language. The Committee determined that with the use of brackets, an accompanying Committee Comment Note is not necessary to explain the bracket’s purpose.

Following the Committee’s discussion and revisions to the Draft Instruction, Mr. Macfarlane moved to publish CV331 for public comment. Judge Bolinder seconded. No member of the committee voiced opposition. A formal vote was made, with all members present voting in favor, except for Ms. North, who did not appear for the vote. The motion to publish the Draft Instruction for public comment passed.

4. CV1740 Series Draft Instructions (abuse of process)

The Committee discussed a new Series Draft Instruction, CV1740 (abuse of process). Mr. Lichfield commented that the Draft Instruction had been prepared by another addressing the comparatively rare claim alleging misuse of criminal process rather than of civil process. He further noted the recent issuance of *MacKey v Krause*, 2025 UT 37. Mr. Lichfield's proposed changes to the original Series Draft Instruction are intended to address the more typical situation. He invited feedback from other Committee members especially to help make the instructions plain to a jury.

The Committee discussed use of language and whether "court process" or "legal process" was more appropriate to describe issues presented in Utah caselaw, and whether one term was better suited for a lay jury. Mr. Lichfield indicated the caselaw regularly refers to "legal process" but does not provide a definition of the phrase. He expressed the view that "legal process" is the term typically used in caselaw and is broader than "court process," and added that Utah caselaw expressly leaves open the issue of whether claims are limited to court proceedings or if they encompass other proceedings, such as administrative proceedings.

The Committee discussed tabling the Draft Instruction so they could get linguistical input from Mr. Eggington. After discussion, the Committee determined to address other revisions to the Draft Instruction before holding the Draft Instruction over for Mr. Eggington's comments.

The Committee discussed the elements necessary for proving abuse of process under existing caselaw. The Committee considered whether there should be revisions to the accompanying comment to the Draft Instruction to address the potential inclusion of other processes to make clear that the inclusion of such remains an open question of law, and to invite tailoring of the Draft Instruction for unique circumstances.

The Committee moved on to discuss CV1741 (use of court process for intended purpose). Ms. McAllister questioned whether the Draft Instruction should include examples. Mr. Lichfield remarked that the included examples are taken directly from the caselaw. The Committee discussed simplifying the Draft Instruction's language, and rewording the proposed language to clarify its meaning. The Committee identified several key words and phrases for further discussion with Mr. Eggington.

The Committee discussed the elements for an abuse of process claim and considered the proposed deletion of Draft Instruction CV1742 (willful act), addressing the "bad motive" element. After comments, the Committee determined to incorporate the "bad motive" language in Draft Instruction CV1740, at subpart (3) to eliminate the need for a separate instruction at CV1742.

Mr. Harman commented that the phrase used “court process” or “legal process” should be consistent throughout the body of the instructions and in the title.

The Committee discussed CV1743 (intent and knowledge of a company). Ms. McAllister indicated a need to remove redundancy between CV1740 and CV1743 so that the elements of abuse of process are delineated in a single instruction and not spread across two instructions. The Committee discussed *Helf v Chevron*, 2015 UT 81, regarding the requisite intent for abuse of process and how instructions should reflect the required knowledge of a defendant company/entity. Mr. Lichfield pointed out that the case law uses the terms “employee and/or agent.” The Draft Instruction was revised according to discussed points and renumbered as CV1742 (because of the deletion of prior proposed CV1742 (willful act)).

Ms. McAllister suggested that the Committee use a clean draft for the next Committee meeting based on revisions made in the current meeting because the Draft Instruction is a new, rather than an amended, instruction. The Committee agreed that a clean version of the Draft Instruction would be presented for further discussion at the next meeting.

5. Progress on Instruction Topics

The Committee reviewed its Table of MUJI Civil Upcoming Queue.

Ms. McAllister identified that for Number 1000 (products liability), a judge is being involved in the discussion and the Committee is waiting for feedback.

Mr. Harman indicated he will contact Adam Buck regarding Number 2700 (Directors and Officer’s Liability).

Ms. McAllister stated that she will consider reaching out to some people regarding Number 2500 (Wills/Probate) and Number 2300 (Sales Contracts and Secured Transactions).

6. Rescheduling and adjournment

The next meeting was projected for October 13, 2025—a holiday. After all members present indicated their availability for rescheduling, the chair determined that the next meeting will be held on October 6, 2025 at 4:00 p.m.

The meeting adjourned.