

Judicial Council Standing Committee on  
Model Utah Civil Jury Instructions

# Agenda

September 8, 2025

4:00 to 6:00 p.m.

Via [Webex](#)

Welcome and Approval of August Minutes	Tab 1	Alyson McAllister
Welcome and Introductions to New Recording Secretary (Clancey Henderson)		Alyson McAllister
CV331 Draft Instruction (past and future medical expenses)	Tab 2	John Macfarlane
CV1740 Series Draft Instructions (abuse of process)	Tab 3	Michael Lichfield
Progress on Instruction Topics	Tab 4	(Informational)

[Committee Web Page](#)

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**Meeting Schedule:** Monthly on the 2<sup>nd</sup> Monday at 4 pm

**Next meeting:** Oct. 15, 2025?

# TAB 1

# 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.

TAB 2

**CV331 Past and future medical expenses.**

In medical malpractice cases, expenses incurred for medical care or medical devices by the Plaintiff prior to trial are determined by the judge. Therefore, ~~You~~ you will not hear evidence regarding the amount of Plaintiff's past ~~has spent on~~ medical-related expenses. ~~in the past and~~ The fact that you will not be presented with past medical-related expense amounts should not ~~must not let the absence of such evidence~~ influence your decisions on other issues in the case. You may ~~will~~, however, be asked to determine what award, if any, should be made for future medical expenses or medical equipment for the Plaintiff.

**References**

Utah Code § 78B-3-405.5 (eff. May 7, 2025).

TAB 3

**CV1740 Elements of abuse of process.**

[Name of plaintiff] asserts that [name of defendant] abused the ~~eriminal prosecution~~court process [litigation?] in [name of plaintiff]'s actions against of [name of ~~plaintiff~~defendant]. To succeed in this claim [name of plaintiff] must prove by a preponderance of the evidence that:

(1) [name of defendant] ~~mis~~used court process, meaning the ~~eriminal prosecution~~the formal steps in a court action;

(2) primarily ~~to accomplish~~for an improper purpose or a purpose ~~for which~~ that process was not designed for; and

(3) the improper purpose was shown by at least one additional willful act outside of the formal steps in the court action~~[name of defendant] engaged in at least one additional willful act independent of [name of plaintiff]'s criminal prosecution that corroborated [name of defendant]'s intention to accomplish the improper purpose for which the criminal prosecution was not designed;~~ and

(4) [name of defendant]'s ~~mis~~use of the ~~eriminal prosecution~~court process caused [name of plaintiff] harm.

**References**

MacKey v. Krause, 2025 UT 37.

*Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, ¶ 37 n.6, 285 P.3d 1157.

[executing civil discovery orders]

*Mountain W. Surgical Ctr., LLC v. Hospital Corp. of Utah*, 2007 UT 92, ¶ 11, 173 P.3d 1276.

[breach of contract and violation of restrictive covenants]

*Hatch v. Davis (Hatch II)*, 2006 UT 44, ¶¶ 34-40, 147 P.3d 383. [assault]

*Tomlinson v. NCR Corp.*, 2013 UT App 26, ¶¶ 14-15, 296 P.3d 760, *rev'd on appeal on other grounds*, 2014 UT 55, 345 P.3d 523. [wrongful termination]

Note: legal process is potentially broader than court process. That said, the vast majority of these cases arise in the context of prior or concurrent district court litigation. Rather than confuse jurors with a general instruction broadened to encompass agency actions and other items that may constitute legal process as opposed to court process, it appears advisable to keep the general instruction simple and revise it on a case-by-case basis for the rare outlying situations. See *MacKey v. Krause*, 2025 UT 37, ¶ 103 (not reaching the question of whether a false report to DCFS could qualify as abuse of legal process).

**CV1741 Use of legal process for intended purpose.**

If [name of defendant] used the ~~eriminal prosecution~~court process against [name of plaintiff] primarily for its proper and intended purpose, the fact that ~~the criminal prosecution~~[name of defendant] received ~~had~~ some ~~other~~ secondary ~~effect~~benefit does not support an abuse of process claim.



~~Instead, I~~ in deciding whether [name of defendant] used ~~[name of plaintiff]'s criminal prosecution court process against [name of plaintiff]~~ primarily to accomplish an improper purpose or a purpose ~~for which~~ that process was not designed for, you must consider whether [name of defendant] attempted to obtain an advantage or gain other than the outcome of the ~~criminal prosecution court process~~ itself. For example, an improper purpose usually often but not always involves some sort of extortion, such as coercing another through the use of the legal process to obtain something like the payment of money or compelling the victim to do something which the victim would not otherwise be legally obligated to do.

~~Conversely~~ On the other hand, merely filing a police report, even a knowingly false police report, in order to hurt someone's reputation ~~without evidence of something more does~~ is not enough to show an improper purpose, because intimidation and desire to hurt a reputation, alone, do not suggest an advantage or gain that [name of defendant] would receive apart from the court process ~~criminal prosecution~~ itself.

### References

*Hatch v. Davis (Hatch II)*, 2006 UT 44, ¶¶ 34-40, 147 P.3d 383.  
*Tomlinson v. NCR Corp.*, 2013 UT App 26, ¶¶ 15-16, 296 P.3d 760, *rev'd on appeal on other grounds*, 2014 UT 55, 345 P.3d 523.  
*Puttuck v. Gendron*, 2008 UT App 362, ¶ 14, 199 P.3d 971.  
*Hatch v. Davis (Hatch I)*, 2004 UT App 378, ¶ 33, 102 P.3d 774.

### CV1742 Willful act requirement.

~~To satisfy the "willful act" requirement of an abuse of process claim, [name of plaintiff] must prove that [name of defendant] engaged in at least one other act outside the pursuit of the criminal prosecution that confirmed its bad motive for employing legal process.~~

### References

~~*Moss v. Parr Waddoups Brown Gee & Loveless*, 2012 UT 42, ¶ 37 n. 6, 285 P.3d 1157.  
*Hatch v. Davis (Hatch II)*, 2006 UT 44, ¶¶ 39-40, 147 P.3d 383.  
*Tomlinson v. NCR Corp.*, 2013 UT App 26, ¶ 15, 296 P.3d 760, *rev'd on appeal on other grounds*, 2014 UT 55, 345 P.3d 523.~~

[This proposed CV1742 instruction seems to just restate the element from CV1740]

### CV1743 Intent and knowledge of a ~~corporation~~ company. [RENUMBER]

[Name of plaintiff]'s claim for abuse of process requires ~~him~~ [name of plaintiff] to show that [name of defendant] acted intentionally in using the ~~criminal court~~ process for an improper ~~or~~ ulterior purpose and in engaging in a willful act outside of that process. Because [name of defendant] is a ~~corporation~~ company, it has ~~multiple~~ any employees who may or may not have knowledge about various things. To satisfy ~~his burden~~ the requirement of showing that [name of defendant] acted intentionally ~~conduct by [name of defendant]~~, [name of plaintiff] cannot piece

together the knowledge of different [name of defendant] employees, each of whom may only know part of the story. -Rather, [name of plaintiff] must show that at least one [name of defendant] employee had all of the required knowledge necessary to establish the elements of ~~the~~his abuse of process claim.

**References**

*Helf v. Chevron U.S.A. Inc.*, 2015 UT 81, ¶ 28, 361 P.3d 63.

# TAB 4

## MUJI Civil Upcoming Queue:

Numbers	Subject	Members	Progress	Next Report Date
331	Past and Future Medical Expenses	John Macfarlane	John presented his draft instruction August 2025. Tabled for further input.	Sept. 2025
1000	Products Liability	Tracy Fowler, Paul Simmons, Judge Todd Shaughnessy	Appeared on Agenda November 2021. Continuing to work and will report back.	2025
2400	Insurance	Andrew Wright, Richard Vazquez, Stewart Harman, Dan Bertch, Bruce Pritchett, Jake Hinkins	Appeared on Agenda March 2022. Feb. 2025 Stewart indicates the group is awaiting a decision on appeal.	
	Unjust Enrichment		Stacy was researching and following up on these instructions.	
1700	Abuse of Process		Marianna could only find notes as to intention to form this subcommittee. David Reymann's prior draft instructions were considered in August 2025. Michael Lichfield made revisions and will present in Sept.	Sept. 2025
2700	Directors and Officers Liability	Adam Buck	April 2025 - Stewart will contact	
2500	Wills / Probate	Matthew Barneck; Rustin Diehl	Matthew and Rustin have met to discuss direction and have started reaching out to various recommendations – Elder law section, Probate Subcommittee, WINGS, recommended individuals. Alyson, Stewart, and Jace to follow up on this one.	
2300	Sales Contracts and Secured Transactions	Matthew Boley, Ade Maudsley	Matthew and Addie are willing to work on this topic and would like more feedback from the Committee. Alyson, Stewart, and Jace to follow up on this one.	
	Case law and Statutory Updates	TBD	Previous chairs or group leads may have feedback. April 2025 John Macfarlane will draft instruction on recent statutory changes affecting med mal cases (presentation of medical bills?).	
	Linguistics and Law I - General	Bill Eggington, Judge Kelly, John Macfarlane, Michael	Presented Feb. 2025. Have identified instructions potentially in need of plain-language	

		Lichfield, Robert Cummings, Clark Cunningham, Jesse Egbert, Scott Jarvis	adjustments; awaiting feedback on work; desire to work with MUJI (Crim) as well	
	Linguistics and Law II - Reasonableness	Judge Bolinder, Bill Eggington, Ben Lusty	Bill presented Feb. 2025 on the changing meaning of reasonableness; this subcommittee would also like to work with MUJI (Crim)	

### Archived Topics:

Numbers	Subject	Completed
1500	Emotional Distress	December 2016
200 / 1800	Fault / Negligence	October 2017
1300	Civil Rights: Set 1 and 2	September 2017
1400	Economic Interference	December 2017
1900	Injurious Falsehood	February 2018
1200	Trespass and Nuisance	October 2019
100	Uniformity	February 2020
1600	Defamation Update	March 2022, December 2022
135	Pretrial Delay	December 2022, February 2023
107A	Avoiding Bias	May 2023, February 2025
632, 632A-632D	Minimum Injury Requirements Update and New	October 2023
132A	Remote Testimony	October 2023
2021	Present Cash Value Update	October 2023, Feb. 2025
900	Easements (prescriptive 920-925, easement by necessity 930-931, and easement by implication, 940-941)	February 2024, Feb. 2025
301B/301C	Elements of a Medical Negligence Claim; Standard of Care	December 2024
324	Use of Alternative Treatment Methods (removed with explanatory committee note)	December 2024
2015	Survival claim (amended committee note)	December 2024
1700	Assault/Battery/False Arrest/Malicious Prosecution	August 2025