

MINUTES

Advisory Committee on Model Civil Jury Instructions
November 10, 2025
4:00-6:00 p.m.

Present: Alyson McAllister, Stewart Harman, Michael Lichfield, Judge Brian D. Bolinder, Bill Eggington, Ben Lusty, Kara North, Aaron Pacini, John Macfarlane, Jace Willard (staff), Clancey Henderson (staff)

Excused: Ricky Shelton

Guests: None

1. Welcome and Approval of Minutes

Stewart Harman welcomed the Committee. The Minutes from the September meeting were approved.

2. Membership Update

Stewart Harman welcomed Aaron Pacini as a new member of the Committee.

3. CV331 (Past Medical Expenses)

The instruction was published for public comment in September 2025. The Committee received two comments on the Instruction. The Committee discussed whether any member had any additional experience with a trial involving this instruction during the intervening time. The Committee discussed the comments to the Instruction and considered the appropriateness of including a note with the Instruction based on the ruling by Judge Bates in *Osborne v Cottam*, Case No. 200906275, Third District Court, State of Utah, in the Order Denying Motion to Preclude Evidence of Economic Damages, entered on September 24, 2025. That order found the statute underlying the Instruction was, in part, unconstitutional. Judge Bolinder observed the procedural posture of the case—a verdict for the defendant—made it unlikely the case would be appealed or that the appellate court would have opportunity to address the ruling. Against that background, the Committee deliberated with regard to including a comment about the underlying statute’s constitutionality. After discussion, the Committee determined to include a comment that at least one district court concluded that there was a constitutional infirmity. The Committee determined not to include a specific case citation in the note to avoid suggestion that undue weight should be given to a single district court judge’s ruling. The Committee decided to re-publish the Instruction, with the new note, for public comment.

Mr. MacFarlane moved to approve the Instruction. Ms. North seconded the motion. Upon a vote, the Instruction was unanimously approved by the Committee for publication and public comment.

4. CV1740 Series Draft Instructions (abuse of process)

The Committee continued its discussion on the series of instructions addressing abuse of process. Mr. Lichfield directed the committee to his primary concern of making the Instruction understandable to a jury, especially with regard to “Court Process.” Mr. Lichfield explained the caselaw typically used the term “Legal Process,” and the distinctions that could be drawn between “Court Process” and “Legal Process.” He emphasized that potential application of abuse of process claims to administrative actions remains an open question under the law in Utah. Mr. Eggington suggested changing the proposed language from “Court Process” to “Legal Process,” as a phrase that better describes the designed purpose of the Instruction. The series of instructions and the Comment to the Instruction were changed to conform with the Committee’s decision to use “Legal Process.”

The Committee discussed the propriety of retaining in the Instruction an example of an abuse of legal process claim to help communicate the concept to a jury. While this has been done in at least one other instruction, it is rare. The committee determined the inclusion of an example is not needed in this series of instructions and would likely not be of value to the jury.

The Committee revised proposed Instruction CV1742 to address ambiguity in the phrasing regarding knowledge imputed to a company, and to simplify the Instruction’s language.

The Committee then moved and voted on the series of proposed instructions, as follows:

CV 1740 – Mr. Lichfield moved to approve Instruction CV1740. Mr. Harman seconded the motion. Upon a vote, the Instruction was unanimously approved by the Committee for publication and public comment.

CV 1741 - Mr. Lusty moved to approve Instruction CV1741. Mr. Harman seconded the motion. Upon a vote, the Instruction was unanimously approved by the Committee for publication and public comment.

CV 1742 - Mr. Lichfield moved to approve Instruction CV1742. Ms. North seconded the motion. Upon a vote, the Instruction was unanimously approved by the Committee for publication and public comment.

5. Progress on Instruction Topics

Ms. McAllister inquired if there had been any feedback from the subcommittee designated to consider product liability instructions. There had been no response to the most recent inquiry. It was determined that Mr. Willard and Ms. McAllister would attempt to contact them again.

Ms. McAllister inquired if there was an appellate decision yet regarding matters before the insurance subcommittee. Mr. Harman indicated they were still waiting for a decision.

Ms. McAllister inquired regarding the subcommittee considering director and officer liability, and whether Mr. Adam Buck needed assistance. Mr. Harman reported that he had reached out roughly three weeks ago and had not heard back. Mr. Harman will reach out again.

Ms. McAllister discussed the subcommittee considering wills/probate and indicated it should be given more direction.

Ms. McAllister asked about the subcommittee considering sales contracts. Mr. Willard had written to them. Ms. Adelaide Maudsley had indicated she was no longer involved. Mr. Willard, Ms. McAllister, and Mr. Harman are to meet and discuss other potential members for this and other stalled subcommittees.

Mr. Eggington reported there was a Corpus Linguistics presentation at BYU in October. Mr. Eggington will work with the linguistics and law subcommittee and Mr. Willard to have linguists report back to the Committee in February 2026.

Mr. Eggington also reported on his work toward defining “reasonableness.” He will visit with a former graduate student working on this project to find out the status and report back to the committee.

Ms. McAllister asked the committee members whether they were aware of any new statutes or caselaw that could catalyze changes to MUJI. The Committee discussed *Gardner v Norman*, 2025 UT 47, and the potential effect on consideration of medical bills and the collateral sources rule. Mr. Lusty and Ms. North will undertake a review of the current MUJI and make a recommendation to the Committee next month about whether we need a new instruction, a revision of existing instructions, or some combination of the two.

6. Scheduling and adjournment

The next meeting will be held on December 8, 2025, at 4:00 p.m.

The meeting adjourned.