

Judicial Council Standing Committee on
Model Utah Civil Jury Instructions

Agenda

November 10, 2025

4:00 to 6:00 p.m.

Via [Webex](#)

Welcome and Approval of September Minutes	Tab 1	Alyson McAllister
Welcome New Committee Member Aaron Pacini		Alyson McAllister
Review Public Comments re: CV331 Past Medical Expenses	Tab 2	Alyson McAllister
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 2nd Monday at 4 pm

Next meeting: Dec. 8, 2025

TAB 1

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.

TAB 2

Instruction	Public Comment
<p data-bbox="203 268 597 300">CV331 Past medical expenses.</p> <p data-bbox="203 342 795 814">In medical malpractice cases, expenses incurred for medical care [or medical devices] by the Plaintiff prior to trial are decided by the judge. Therefore, you will not hear evidence regarding the amount of Plaintiff's past medical-related expenses. The fact that you will not be presented with past medical-related expense amounts must not influence your decisions on other issues in the case. [You may be asked to determine what award, if any, should be made for future medical expenses [or medical equipment] for the Plaintiff.]</p> <p data-bbox="203 856 347 888">References</p> <p data-bbox="203 930 787 961">Utah Code § 78B-3-405.5 (eff. May 7, 2025).</p>	<p data-bbox="823 268 1222 342">From: Chad Shatttuck September 10, 2025 at 7:11 am</p> <p data-bbox="823 384 1414 562">This is a terrible instruction. The Jury is the fact finder and the judge should not usurp that role for past medical expenses. This unduly restricts Plaintiffs in medical malpractice cases.</p> <hr data-bbox="823 598 1414 602"/> <p data-bbox="823 644 1222 718">From: Clancey Henderson September 24, 2025 at 3:18 pm</p> <p data-bbox="823 749 1404 1264">This instruction may be premature. Constitutional challenges have been raised to the statutory basis of this instruction, in particular, Utah Code Section 78B-3-405.5(2), with at least some success in the district courts to date. See <i>Osborne v Cottam</i>, Case No. 200906275, Third District Court, State of Utah, before the Honorable J. Matthew Bates, Order Denying Motion to Preclude Evidence of Economic Damages, entered on September 24, 2025 (finding Section 78B-3-405.5(2) violates Art. VIII Section 4 of the Utah Constitution regarding separation of powers).</p> <p data-bbox="823 1295 1409 1444">If the proposed instruction is published, it should include a footnote disclosing that at least some courts have declined to enforce the statute as unconstitutional.</p>

TAB 3

CV1740 Elements of abuse of process.

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

- (1) [name of defendant] misused court process, meaning the formal steps in a court action;
- (2) primarily for an improper purpose or a purpose 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 that confirmed its bad motive; and
- (4) [name of defendant]'s misuse of the court process caused [name of plaintiff] harm.

Commented [JW1]: For Bill

References

Mackey v. Krause, 2025 UT 37, ¶¶ 95-96, ---P.3d ----.

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]

Comment

“Legal process,” the term typically used in the case law, is potentially broader than “court process.” However, the vast majority of these cases arise in the context of prior or concurrent district court litigation. As a result, 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 court process for intended purpose.

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

In deciding whether [name of defendant] used court process against [name of plaintiff] primarily to accomplish an improper purpose or a purpose 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 court process itself.

For example, an improper purpose may involve 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.

Commented [JW2]: For Bill

On the other hand, merely filing a police report, even a knowingly false police report, in order to hurt someone's reputation is not enough by itself 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 itself.

Commented [JW3]: For Bill

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 Intent and knowledge of a company.

[Name of plaintiff] must show that [defendant company] acted intentionally in the misuse of court process. To satisfy this requirement, [name of plaintiff] cannot piece together the knowledge of different [company] employees, but must show that at least one agent of [defendant company] had all of the required knowledge necessary to establish the elements of the 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 and Sept. 2025. Published for public comment Sept.	Nov. 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 presented draft revisions in Sept.	Oct. 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.	
	Linguistics and Law I - General	Bill Eggington, Judge Kelly, John Macfarlane, Michael Lichfield, Robert Cummings, Clark	Presented Feb. 2025. Have identified instructions potentially in need of plain-language adjustments; awaiting feedback on work; desire to work with MUJI (Crim) as well	

		Cunningham, Jesse Egbert, Scott Jarvis		
	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