

MINUTES

Advisory Committee on Model Civil Jury Instructions
January 12, 2026
4:00-6:00 p.m.

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

Excused: Aaron Pacini, Bill Eggington

Guests: None

1. Welcome and Approval of Minutes

Alyson McAllister welcomed the Committee. The Minutes from the November 2025 meeting were approved.

2. Review Public Comments to Instructions CV331 (Past Medical Expenses) and CV1740 Series (Abuse of Process)

The instructions were published for public comment in November 2025. There were no public comments for discussion by the Committee.

3. Discussion on CV2119 (Implied Covenant of Good Faith and Fair Dealing)

The Committee discussed a recently published article in the Bar Journal regarding CV2119 (Implied Covenant of Good Faith and Fair Dealing) and the article's request for the Committee to revisit the instruction and the pertinent caselaw to determine if the instruction language should be revised. The Committee considered the request and determined that Mr. Willard will reach out to the author to gather additional information informing her suggestion before further consideration or action.

4. Discussion of CV2005 (Economic Damages, Medical Care and Related Expenses)

Committee members Ms. North and Mr. Lusty gave an update on their work evaluating CV2005 (Economic damages, Medical care and related expenses) for potential amendment in light of *Gardner v. Norman*, 2025 UT 47. They indicated that, at least, updated citations to the instruction would be appropriate to include *Gardner*. They also suggested additional actions for consideration by the Committee, including: separating instructions on future and past medical damages, including an instruction to address the collateral source rule, and expanding the instruction to enumerate the factors raised in *Gardner*.

The Committee determined to include a citation in the instruction to *Gardner* as well as to the Restatement cited by the Court in *Gardner (Restatement (Second) of Torts § 911 cmt. h)*.

The Committee discussed creating new separate instructions for past medical expenses and future medical expenses. The Committee also considered the addition of a Committee Note to the instruction to address *Gardner's* holding. The Committee drafted separate proposed instructions for past and future medical expenses for deliberation. The Committee determined to retain a single instruction for past and future medical expenses, and to draft notes pertaining to past medical expenses with citation to *Gardner* for inclusion with the instruction.

In context of this deliberation, the Committee also discussed adding a note regarding *Gardner's* holding to CV2003 (Economic damages defined). A note was drafted and considered by the Committee.

The draft instructions were discussed by the Committee.

Mr. MacFarlane moved to approve the new proposed references and notes in CV2003. Ms. North seconded the motion. Upon a vote, the instruction was unanimously approved by the Committee for publication and public comment.

Mr. MacFarlane moved to approve the new proposed references and notes in CV2005. Ms. North seconded the motion. Upon a vote, the instruction was unanimously approved by the Committee for publication and public comment.

5. Scheduling and adjournment

The next meeting will be held on February 9, 2026, at 4:00 p.m.

The meeting adjourned.