

MINUTES

Advisory Committee on Model Civil Jury Instructions

May 11, 2015

4:00 p.m.

Present: Juli Blanch (chair), Marianna Di Paolo, Phillip S. Ferguson, Joel Ferre, Tracy H. Fowler, Honorable Ryan M. Harris, L. Rich Humpherys, Patricia C. Kuendig, Paul M. Simmons, Honorable Andrew H. Stone, Nancy Sylvester

Excused: Paul M. Belnap, Gary L. Johnson, John R. Lund, Stuart H. Schultz, Ryan M. Springer, Peter W. Summerill

1. *Appreciation for the Service of Messrs. Ferguson and Humpherys.* On behalf of the committee, Ms. Blanch thanked Messrs. Ferguson and Humpherys for their many years of devoted service on and their many contributions to the committee and its work. They were original members of the committee and are now stepping down. Ms. Blanch presented each of them with a certificate signed by her and the Chief Justice and a letter of appreciation signed by the Chief Justice.

2. *Introduction of New Members.* Ms. Blanch introduced the two new members of the committee, Patricia Kuendig and Joel Ferre. Ms. Kuendig is in private practice in Park City, having moved here from Florida some three years ago, and Mr. Ferre is the Deputy Director of the Litigation Division of the Utah Attorney General's Office.

Dr. Di Paolo joined the meeting.

3. *Approval of Minutes.* On motion of Mr. Ferguson, seconded by Mr. Humpherys, the committee approved the minutes of the April 13, 2015 meeting.

4. *Subcommittees.* Ms. Blanch noted that some of the subcommittees still need members. Kent Alderman declined to chair the Wills and Probate subcommittee but agreed to sit on the committee and suggested other members, including Scott Hansen and Cal Curtis. Messrs. Ferguson and Humpherys repeated their suggestion of Tom Christensen. Mr. Simmons volunteered to serve on the Emotional Distress subcommittee, and Ms. Kuendig volunteered to serve where needed.

5. *CV2026, Punitive damages–introduction.* Ms. Sylvester noted that she has revised the committee notes, which need to be approved. Mr. Simmons noted that the third numbered subparagraph of the instruction did not track the statutory language and could be misleading. It said “manifested a knowing and reckless indifference toward, and a disregard of, [name of plaintiff]’s rights,” as opposed to “the rights of others.” Mr. Simmons thought that a jury might think that it had to find that the defendant knew that his or her conduct “would, in a high degree of probability result in substantial harm” to the plaintiff. He suggested changing it to read, “disregard of the

rights of others.” Mr. Humpherys thought that such a change would invite reversal on appeal because it would allow the jury to award damages for harm to others, in violation of due process. Judge Stone and Mr. Simmons thought that the other instructions adequately explained the constitutional limits on awards of punitive damages. Judge Stone noted that restricting the definition to the plaintiff’s rights would also invite an appeal, since one can get punitive damages for conduct not directed to a particular person, such as in the Ford Pinto cases. Dr. Di Paolo asked if a plaintiff could get punitive damages if he or she suffered no other harm. The committee explained that some injury to the plaintiff is a prerequisite for punitive damages, but that the jury will have found that the plaintiff was injured by the time it gets to the question of punitive damages. Mr. Blanch asked if the jury would consider the plaintiff in the class of “others” if the language of the instruction were changed. Mr. Humpherys thought so. Dr. Di Paolo thought it would be better to say “other’s rights” than “the rights of others,” the former sounding more inclusive and less formal. She suggested putting in the first paragraph that harm to the plaintiff is required for punitive damages, to avoid any implication that the plaintiff’s harm is irrelevant. Ms. Kuendig suggested saying “the rights of the plaintiff or others exposed to such misconduct.” The committee finally settled on “the rights of others, including [name of plaintiff].” The committee also approved the alternative to committee note 1, which included more information about the cited cases. On motion of Mr. Simmons, seconded by Mr. Fowler, the committee approved the instruction.

6. *CV2027, Amount of punitive damages.* At Dr. Di Paolo’s suggestion, the comma in the third line of the instruction was changed to a colon.

7. *Change in Procedure.* Ms. Sylvester noted that, now that the jury instruction committees are under the umbrella of the Judicial Council, proposed instructions will be sent out to the bar for comment, beginning with the punitive damage instructions.

8. *Next meeting.* The next meeting will be Monday, September 14, 2015, at 4:00 p.m. The June 8, 2015 meeting was canceled.

The meeting concluded at 4:55 p.m.