MINUTES

Advisory Committee on Model Civil Jury Instructions

February 13, 2012

4:00 p.m.

Present: Juli Blanch, Frank Carney, Professor Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Judge Deno Himonas, Ryan M. Springer, Peter W. Summerill, Judge Kate Toomey, David E. West, Timothy M. Shea

Excused: John L. Young, Chair, Judge William W. Barrett, L. Rich Humpherys, Gary L. Johnson, John R. Lund, Paul M. Simmons,

Mr. Carney chaired the meeting in Mr. Young's absence.

CV 2803. Apparent authority. Mr. West said that the instruction should include a statement that nothing the purported agent says can bind the principal. The plaintiff has a duty to inquire about the agent's authority independent of the agent's representations. Judge Himonas said that the first paragraph is sufficient because it focuses exclusively on the principal's conduct.

Mr. Ferguson said that the references cited includes the requirement that the plaintiff rely on the agent's apparent authority, but that there is nothing in the instruction to that effect. Mr. Shea included "and [name of plaintiff] relied on that authority" at the end of paragraph (3). The committee discussed the draft further but decided to wait until Mr. Lund, who provided the original draft, could attend.

CV2805. Scope of employment. Mr. Carney said that although scope of authority and scope of employment are similar concepts in the law of agency and vicarious liability, the courts have developed more detailed tests for the latter and limited them to traditional employment relationships.

Prof. Di Paola observed that the phrase "scope of employment" is used in several of the subsequent instructions, but that it is used only on the title of this instruction. The committee decided to rework the instruction into a definition of "scope of employment." In the introductory paragraph the last sentence was redrafted: To succeed on this claim, [name of plaintiff] must prove that [name of employee]'s conduct "was within the scope of employment. 'Scope of employment' means that the conduct: …."

The committee discussed the last phrase of paragraph (1) "…in other words, [he] was doing [name of employers]'s work rather than being wholly involved in a personal matter." Prof. Di Paola thought that "completely" would be better understood that "wholly." Mr. Springer said that the case from which the case comes uses "entirely." He suggested that the "in other words" clause, as written in the case, appeared to summarize all three of the requirements for something to be within the scope of employment.

Mr. Shea said that the concept of being wholly involved in a personal matter is contrary to the later instructions, which include several qualifiers. After discussion, the committee deleted the phrase, but decided to wait until Mr. Simmons, who provided the original draft, could attend.

CV 2806. Deviation from scope of employment. The committee approved the instruction as drafted.

CV 2807. Scope of employment; travel to and from work. Several members suggested that the instruction should be presented as an exception to the general rule that the employer is not liable for the employee's conduct while the employee is commuting. Mr. Shea added to the beginning of the introductory paragraph "Usually, traveling to and from work is not within the scope of employment. [Name of plaintiff] claims that…."

The committee added references and a committee note directing lawyers and judges to Ahlstrom v. Salt Lake City Corp., 2003 UT 4, 73 P.3d 315 for examples of the several circumstances that are exceptions to the "coming and going" rule. The committee discussed the rule further, but decided to wait until Mr. Simmons, who provided the original draft, could attend.

The meeting ended at 6:00 p.m.