

MINUTES

Standing Committee on Model Civil Jury Instructions

May 14, 2018

4:00 p.m.

Present: Tracy Fowler (Chair Pro Tem), Nancy Sylvester (staff), Professor Marianna Di Paolo, Joel Ferre, Ruth A. Shapiro, Doug Mortensen, Lauren Shurman

Excused: Judge Andrew Stone, Christopher M. Von Maack, Paul Simmons, Peter Summerill, Judge Keith Kelly

Guests: Heather White, Ryan Frazier

1. *Welcome, announcements and approval of minutes.*

Mr. Fowler welcomed the committee to the meeting. He then had new member, Doug Mortensen, introduce himself to the committee. Mr. Fowler asked for a motion on the minutes. On motion of Joel Ferre, seconded by Lauren Shurman, the committee approved the minutes of the April 9 meeting.

2. *Civil Rights Instructions*

CV 1301

The committee discussed the use of the terms “pretending” and “purporting” in CV1301. Nancy Sylvester and Heather White said that the 10th Circuit did not use the term “pretending” the way the 9th Circuit did, but the 10th Circuit did use the term “purporting.” Because the terms seemed like they would be confusing to the average juror, the committee replaced them both with “claiming to act.”

On motion of Ruth Shapiro, seconded by Joel Ferre, the committee approved the revised instruction.

CV 1308 and 1309

To address readability issues, the committee redrafted the following sentence in CV 1309: “Bad intentions will not make a constitutional violation out of an objectively reasonable use of force, and good intentions will not make an unreasonable use of force proper.” The sentence was redrafted as follows: “An officer’s evil intentions will not make a constitutional violation out of a reasonable use of force. Likewise, an officer’s good intentions will not make an unreasonable use of force constitutional.” The language largely tracks *Graham v. Connor*, 490 U.S. 386 (1989).

To address a comment made during the comment period about not including the objectiveness standard, the committee drafted the following note: “This instruction supplies a framework for the concept of ‘objective reasonableness.’ Linguistically,

‘objective’ and ‘subjective’ are difficult terms for the average person to understand, so in order to avoid confusion, the instruction does not use the term ‘objectively reasonable.’”

On motion of Lauren Shurman, seconded by Joel Ferre, the committee approved revised instructions 1308 and 1309, which also contained edits from the April meeting.

3. *Economic Interference*

At Doug Mortensen’s suggestion, the committee discussed with Ryan Frazier whether to include an instruction on interference with a contractual relationship. The committee determined that it did need to include one since the note to CV1401 discussed that the instructions would need to be included in conjunction with others, including the contract instructions and potentially other tort instructions.

Regarding the comment to the instructions by Josh Lee, Mr. Frazier reported that the subcommittee’s view was that the established standard of a trade or profession aspect of improper means had not been fleshed out in Utah and the instruction simply reflected the law as it currently stands. The subcommittee determined that the argument should be made in a case to an appellate court. The committee agreed with the subcommittee’s determination and also discussed that what comprised an “established standard” was a legal question for the judge. The committee determined that the case cited by Mr. Lee, *Walker v. Anderson-Oliver Title Ins. Agency, Inc.*, 2013 UT App 202, ¶¶ 20-21, 309 P.3d 267, 274, could be appropriately added to CV 1404.

The committee also discussed the use of the term “contrary to law” in the same instruction. Suggestions were made to change the phrase to “unlawful” or “against the law.” After reviewing the instruction note, which explained the areas of law “contrary to law” described and also made clear that the practitioners would need to provide examples, the committee determined that “contrary to law” would be sufficiently clear.

On motion of Doug Mortensen, seconded by Joel Ferre, the committee approved revised instruction 1404.

4. *Other business.*

There was no other business to discuss at this time.

5. *Next meeting.*

The next committee meeting is scheduled for Monday, June 11th from 4:00 to 6:00 p.m. Ms. Sylvester said she would discuss canceling the meeting with Judge Stone since it did not appear that there would be another set of instructions ready by that time.

The meeting adjourned at 5:36 p.m.