

Model Utah Civil Jury Instructions Committee

Summary Minutes

January 13, 2020

In attendance:

Judge Andrew Stone (chair), Nancy Sylvester (staff), Joel Ferre, Judge Keith Kelly, Randy Andrus, Ruth Shapiro, Lauren Shurman, Marianna Di Paolo, Samantha Slark, Doug Mortensen, Alyson McAllister.

Excused:

Ricky Shelton

1) Welcome and introduction of new members.

Judge Stone welcome everyone to the meeting and had the new members, Randy Andrus and Samantha Slark, introduce themselves.

2) Approval of Minutes.

Judge Stone asked for a motion on the October meeting minutes. Alyson McAllister moved to approve them. Doug Mortensen seconded. The motion passed unanimously.

3) Discuss timeline/Upcoming topics.

The committee discussed its timeline and determined that Tracy Fowler's committee would report in March.

4) Discussion of Uniformity Instructions.

CV102A - Moved by Judge Kelly, seconded by Joel Ferre. APPROVED.

CV107 - Doug Mortensen brought up concern about the wording of this instruction. Marianna Di Paolo made suggestions to correct wording. The committee discussed whether the instruction should be changed now or whether the committee should wait for an implicit bias instruction. The committee elected to move forward now. Mr. Mortensen moved to accept the changes. Judge Kelly seconded. APPROVED.

CV108 – The subcommittee suggested replacing this instruction with CR110 because it is simpler and more direct. The committee discussed whether we need to say the juror's notes would be destroyed after. Mr. Mortensen moved to approve the amendments, Professor Di Paolo seconded. APPROVED.

CV109 – This instruction was adopted from CR111. It appeared that this instruction was approved in June, but the committee wondered whether the last sentence should be included at all, and if so, should it be reworded. The committee discussed specifying that jurors would be asking questions of the current witness only. The committee then discussed modifying the title. Ms. McAllister moved to approve the instruction, Ms. Shapiro seconded. APPROVED.

Judge Kelly moved to establish a stylistic convention, that whatever in the title is not intended to be read to jury is in brackets and lower case and would not be in parentheses for all 100 level instructions. Ms. Shurman seconded. APPROVED

CV 119. Committee discussed whether CV119 may need to be reconsidered in light of the anticipated implicit bias instructions, as the last paragraph seemed to inviting decisions based on bias. Judge Stone recommended flagging this instruction for that subcommittee to look at. Mr. Mortensen raised an issue the language dealing with stipulations and judicial notice. The committee determined that this was addressed in another instruction.

CV119A - Judge Stone raised a question about the order of when this instruction is given and changes are recommended to (1) and (2). Ms. Shurman moved to approve changes to CV119 and 119A, Ms. McAllister seconded. APPROVED.

CV120 – The committee liked the idea of using the rain example from the criminal instructions instead of the old cherry pie example. Rain uses a more universal experience and leaves out any implications of guilt, making it easier to understand why circumstantial evidence is as convincing as direct. Judge Kelly moved to approve, Professor Di Paolo seconded. APPROVED.

CV121-123 - Judge Kelly moved to approve new CV121 to replace old CV121-123. Ms. Shapiro seconded. APPROVED. This instruction was flagged for the implicit bias subcommittee.

CV128A - Judge Kelly suggested modifications to this instruction. Ms. McAllister said she would check her emails and notes to see if consideration was given to substituting this one with CR107. The committee will return to this instruction next meeting.

5) Adjournment.

The meeting adjourned at 6 p.m.

6) Next meeting.

The next meeting will be on February 10, 2020.