

MINUTES

Advisory Committee on Model Civil Jury Instructions

January 10, 2022

4:00 p.m.

Present: Stacy Haacke (staff), Douglas G. Mortensen, Randy Andrus, Lauren A. Shurman, Judge Kent Holmberg, Ricky Shelton, Samantha Slark, Judge Keith A. Kelly, Adam D. Wentz
Also present: Robert Cummings, Marianna Di Paolo

Excused: Ruth A. Shapiro (chair), Alyson McAllister

1. *Welcome.*

Lauren Shurman welcomed everyone.

2. *Approval of Minutes.*

November 2021 meeting minutes approved.

3. *Discussion of Product Liability Instructions.*

- Robert Cummings drafted new definitions for the Boundary by Acquiescence instruction: visible line, occupy, and mutual acquiescence. The committee made edits to each as detailed below.
 - Visible line
 - Removed “that creates an observable line sufficient to give a reasonable landowner notice that the owner of the adjoining property is using the line as a boundary” from the end of the instruction.
 - The definition includes examples of human-made visible lines (fence, building, monument, hedge). The committee discussed adding examples of natural objects that could constitute a “visible line” such as streams, edge of a cliff, etc. Looked to the case law for examples and found nothing. Decided to add no examples and that the descriptive term “natural” was sufficient.
 - Occupy
 - Changed “*examples of activities that would constitute occupation*” to “*examples of activities that could constitute occupation.*”
 - Changed “*the plaintiff*” to “*name of plaintiff.*”
 - Mutual Acquiescence
 - Made several minor edits to create consistency both within the definition itself and the other, previously-discussed definitions.

- Marianna Di Paolo expressed concerns regarding whether the phrase “inaction despite notice” is easily understandable to the average juror. The committee determined to omit the language altogether.
 - Deleted the last sentence of the definition immediately prior to the note.
- CV10__ (Exception to Silence Equaling Acquiescence)
 - Moved this instruction to immediately following the Acceptance by Acquiescence instruction.
 - Discussed whether the sentence beginning with “this is an affirmative defense” is necessary. Ultimately decided to remove it.
 - Added a new, clarifying note: “The burden of proof for this defense is not entirely clear from the caselaw; however, a preponderance of the evidence standard would apply in the absence of authority suggesting that the higher clear and convincing standard would be applicable. If this instruction is provided, then you may also provide the preponderance of the evidence instruction. MUJI 117.”
 - Changed “*has made a sufficient showing that*” in the last sentence to “*shows by a preponderance of the evidence that . . .*”
 - Changed “*then you may find that the parties did not acquiesce to the boundary*” to “*then you must find that defendant did not acquiesce to the boundary*” in the last sentence.
4. A clean copy of the above instructions will be sent to committee members for final review. Final approval will be discussed at the next meeting.
 5. *Adjournment.*

The meeting concluded at 6:03 PM.