

MINUTES

Advisory Committee on Model Civil Jury Instructions

May 9, 2022

4:00 p.m.

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

Excused: Alyson McAllister, Judge Kent Holmberg

1. *Welcome.*

Lauren Shurman welcomed and thanked the Committee.

2. *Approval of Minutes.*

March 2022 meeting minutes approved.

3. *Discussion of Boundary by Acquiescence.*

- CV___ Boundary by Acquiescence
 - Marianna Di Paolo questioned whether “you must be satisfied that” language in second paragraph should be changed to be consistent with past instructions.
 - Suggested revision: “To establish [name of plaintiff]’s claim of boundary by acquiescence, [he or she] must prove each of the following elements by clear and convincing evidence:”
 - Revised minor typos within the instruction.
- CV_____: Visible Line
 - No comments by Committee.
- CV_____: Occupy Defined
 - Placed “his/her” in brackets to be consistent with past instructions.
 - Changed “the boundary” to “a boundary” to be consistent with past instructions.
- CV_____: Mutual Acquiescence
 - The last bracketed “name of defendant” language was changed to “he/she”.
 - Revised “the boundary” to “a boundary” in multiple instances to be consistent with past instructions.
 - Revised the last sentence of the instruction to active voice.
- CV_____: Exception to Silence Equaling Acquiescence
 - Put “he or she” and “his or her” in brackets in multiple instances to be consistent with past instructions.

- Changed “shows by a preponderance of the evidence” to “proves by a preponderance of the evidence”
- The last sentence of the burden of proof note was struck as suggested by Judge Kelly.

Judge Kelly moved for the adoption of these revised instructions. Ricky Shelton seconded. The Committee formally approved the Boundary by Acquiescence instructions.

4. Discussion of upcoming queue

- Judge Kelly discussed whether the Committee should tackle implicit bias instructions and argued for the benefits of doing so.
 - Marianna Di Paolo also voiced her interest in participating in this subcommittee.
 - The Committee had no objections to creating a subcommittee on this topic. Lauren Sherman asked Judge Kelly to take the lead in organizing the same.
 - Marianna Di Paolo, Ruth Shapiro, Doug Mortensen, Judge Su Chon, and Judge Clem Landau were suggested subcommittee members.
 - A meeting for this new subcommittee was tentatively scheduled.
- Stacy Haacke continues to contact subcommittee members to check on status of instruction updates for the Committee to review.
- The Committee discussed potential candidates for various future topics.

5. Adjournment.

The meeting concluded at 5:19 PM.