

MINUTES

Advisory Committee on Model Civil Jury Instructions

March 14, 2022

4:00 p.m.

Present: Ruth A. Shapiro, Stacy Haacke (staff), Douglas G. Mortensen, Randy Andrus, Lauren A. Shurman, Judge Kent Holmberg, Judge Keith A. Kelly, Alyson McAllister, Adam D. Wentz
Also present: Stewart Harman, David Reymann, Marianna Di Paolo

Excused: Samantha Slark, Ricky Shelton

1. *Welcome.*

Lauren Shurman welcomed and thanked the Committee.

2. *Approval of Minutes.*

February 2022 meeting minutes approved.

3. *Discussion of Defamation Instructions.*

- CV1602 Elements of a Defamation Claim
 - David Reymann was present on behalf of the subcommittee. He explained revisions he made to the instruction, including the burden of change language for public figure vs. private plaintiff, as well as changes in the case law.
 - The Committee discussed the effectiveness of using brackets when providing alternatives.
 - Corrected typo in the Committee Notes to include the decision date for *Snyder v. Phelps*.
 - The Committee formally approved this instruction with Douglas Mortensen abstaining from the vote.
- CV1605 Definition: False Statement
 - David Reymann explained the revisions to this instruction.
 - Lauren Shurman suggested providing an explanation in the Committee Notes of when to use the various alternatives bracketed in the instruction. David Reymann provided language for this explanation and it was incorporated into the Committee Notes.
 - The Committee formally approved this instruction with Douglas Mortensen abstaining from the vote.

4. *Discussion of Insurance Litigation Subcommittee*

- Stewart Harman was present on behalf of the Insurance Litigation subcommittee. He asked the Committee for guidance as to what specifically it would like the subcommittee to address.
 - Mr. Harman suggested starting with bad faith claims and the “fairly debatable” standard.
 - Douglas Mortensen suggested addressing breach of contract issues.
 - Alyson McAllister suggested that the subcommittee look at California’s Insurance Litigation jury instructions as potentially helpful templates.
- The subcommittee currently has three defense counsel and two plaintiffs counsel. There is no subcommittee chair appointed.
- Alyson McAllister noted that the MUJI directives are that all subcommittees be made up of an equal amount of plaintiff and defense counsel. Judge Kelly also voiced his preference to have an equally-balanced subcommittee. Mr. Harman agreed to discuss additional candidates the next time he meets with the subcommittee and report back.
- The subcommittee will plan to have proposed instructions within six months’ time.

5. Wills and Probate Subcommittee

- There does not appear to be a full subcommittee for the Wills and Probate instructions.
- Judge Kelly recommended reaching out to the Elder Law section and Judge Scott to seek referrals of potential candidates for the subcommittee.
- Douglas Mortensen suggested Charles Bennett, Tom Christensen, or any of Mr. Christensen’s law partners as potential candidates.
- Stacy Haacke will reach out to these referrals.

6. Assault and False Arrest Subcommittee

- Alyson McAllister was formally on this subcommittee and believes that it will likely have revised instructions prepared within the next few months.

7. Implicit Bias Subcommittee

- Stacy Haacke mentioned the courts’ interest in having implicit bias instructions.
- No subcommittee currently exists. Various members of the Committee noted that implicit bias remains a hotly contested issue, which may explain the lack of instructions to date.
- Judge Kelly suggested using the Office of Fairness and Accountability as a reference point.
- Stacy Haacke will reach out to Judge Chon, the Office of Fairness and Accountability, and others to discuss the possibility of staffing a subcommittee. Alyson McAllister agreed to assist.

8. Directors and Officers Liability, Agency, Fiduciary Responsibility

- Judge Holmberg noted difficulties dealing with these topics during two of his recent trials and questioned whether it may be helpful to set up a subcommittee or subcommittees to address possible instructions. The Committee was open to identifying potential candidates.
- The Committee suggested splitting these various topics into multiple subcommittees.
- Lauren Shurman and Stacy Haacke agreed to assist in recruiting subcommittee members.

9. *Case Law Updates*

- Allyson McAllister suggested reaching out to subcommittee chairs and requesting case law updates to their respective instructions.

10. *Adjournment.*

The meeting concluded at 5:33 PM.