

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

September 12, 2022

4:00 p.m.

Present: Judge Kent Holmberg, Judge Keith A. Kelly, Lauren A. Shurman, Alyson McAllister, Ruth A. Shapiro, William Eggington, Douglas G. Mortensen, Randy Andrus, Ricky Shelton, Adam D. Wentz, Stacy Haacke (staff)  
Also present:

Excused: Mark Morris, Samantha Slark

1. *Welcome.*

Lauren Shurman welcomed the Committee.

2. *Approval of Minutes.*

August 2022 meeting minutes approved.

3. *Discussion of Implicit Bias.*

Judge Kelly updated the Committee on the status of the implicit bias subcommittee's work on drafting instructions. Subcommittee is making good progress. Judge Kelly welcomed additional input on the latest version of the instructions. Several small revisions suggested for the subcommittee's consideration.

4. *Discussion of Public Comments*

The Committee addressed several public comments on various instructions.

- CV131 - Spoliation. It was suggested that the instruction strike the word "intentionally" as spoliation precedent does not require clear intent. Committee agreed and revisions approved.
- CV155 and CV 156. It was suggested that these instructions be revised to remove redundancy. Committee agreed and revisions approved.
- CV1605 – False Statement. It was suggested that the instruction use "reasonably" as a qualifier in the defamation-by-implication instruction. There was some confusion as to where precisely the commenter wanted the qualifier to be added in the latest version of the instruction and whether such a change is consistent with precedent. Judge Kelly suggested that Stacy reach out to the commenter for clarification. He also suggested that the comment be forwarded to the subcommittee for review. The Committee agreed.
- CV1206 – Nuisance. Commenter concerned that the remedy of nuisance that is available to the State of Utah acting in its sovereign capacity has different

elements than the remedy available to subdivisions or private parties. Judge Kelly suggested that the comment be forwarded to the subcommittee for review. Committee agreed.

- Proposed New Instruction. “Time taken for case to arrive at trial.” Committee debated whether such an instruction would be beneficial. Alyson McAllister agreed to look into whether this instruction is used elsewhere and the Committee agreed to discuss at its next meeting.

5. *Discussion of Future Instructions.*

Committee addressed upcoming queue.

6. *Virtual vs. In-person vs. Hybrid Meetings.*

The committee again addressed the option of holding an in-person meeting once quarterly.

7. *Adjournment.*

The meeting concluded at 5:13 PM.