

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

January 9, 2023

4:00 p.m.

Present: Judge Keith A. Kelly, Lauren A. Shurman, Alyson McAllister, William Eggington, Ruth A. Shapiro, Douglas G. Mortensen, Samantha Slark, Ricky Shelton, Adam D. Wentz, Jace Willard (staff).

Also present: Robert Fuller, Doug Farr

Excused: Judge Kent Holmberg, Mark Morris, Stacy Haacke (staff).

### 1. *Welcome.*

Lauren Shurman welcomed the Committee.

Samantha Slack has given her notice and will be leaving the Committee following the appointment of her replacement. The Committee now has two vacancies to fill.

### 2. *Approval of Minutes.*

December 12, 2022 meeting minutes approved.

Judge Kelly expressed his willingness to speak to the Board of District Court Judges regarding the Avoiding Bias Instructions to see if they have substantive input and to determine whether there is a consensus that these instructions will be useful. Judge Kelly may prepare a memorandum to provide to the Board as well.

### 3. *CV\_\_\_ Prescriptive Easement. Introduction.*

- Doug Farr and Robert Fuller joined the meeting to discuss the proposed instruction.
- Mr. Farr explained the growing importance of easement law and outlined generally the organization of the proposed instructions.
- The Committee considered whether the introductory instruction is even necessary or consistent with previous instructions. Multiple members of the Committee opined that it was duplicative and did not add substantive material not found in later instructions.
- The Committee agreed to strike this instruction altogether.

### 4. *CV\_\_\_ Prescriptive Easement. Elements of a claim.*

- Introductory sentences were suggested and added to account for some of the language previously found in the introductory instruction.

- Judge Kelly suggested edits to account for the specific easement claims being made in the subject lawsuit, and not simply general concepts. These edits were incorporated into the draft.
- The Committee agreed that legalese in the instruction should be simplified. The Committee made multiple such edits and clarifications.
- A conclusory statement was suggested to include clarification that if the plaintiff can establish all elements of a prescriptive easement, plaintiff may continue to use the property *in a similar manner*. The Committee later concluded that this addition may be duplicative. The Committee discussed whether this language should be used in a separate instruction, as well as what precisely the jury must decide in an easement action versus what the judge must determine. These questions were reserved for a later meeting.

5. *CV\_\_\_ Prescriptive Easement. “Open and Notorious” Defined.*

- Members of the Committee pointed out that these terms are previously defined in the adverse possession and boundary by acquiescence instructions.
- The language was edited to simplify and clarify.
- Doug Farr had to leave the meeting early but agreed to make additional changes to the defined terms and return for the next meeting.

6. *Evolving Meaning of “Reasonable”*

- Bill Eggington presented on Corpus Linguistics, the evolution of language, and, specifically, evolution of the term “reasonable.”

7. *CV632 Threshold.*

Alyson McAllister posed the question to the Committee whether a subcommittee should be assigned to draft this instruction, or if an individual could take on the responsibility. Judge Kelly suggested having specialist from both sides of the bar contribute. Alyson McAllister and Samantha Slark agreed to prepare a draft for the next meeting.

8. *Adjournment.*

The meeting concluded at 6:03 PM.