

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

May 8, 2023

4:00 p.m.

Present: Judge Kent Holmberg, Judge Keith A. Kelly, Lauren A. Shurman, Alyson McAllister, Douglas G. Mortensen, Adam D. Wentz, Jace Willard (staff).

Also present: Adam Pace, Robert Fuller, Samantha Slark

Excused: Ricky Shelton, William Eggington, Mark Morris

1. *Welcome.*

Lauren Shurman welcomed the Committee.

2. *Approval of Minutes.*

April meeting minutes approved.

3. *CV632 Threshold/Minimum Injury Requirements*

- Discussed necessity of the committee note as drafted and determined to delete it.
- Discussed whether the title for the instruction should be “Threshold” or “Minimum Injury Requirements.” The Committee determined that “Minimum Injury Requirements” is clearer.
- Without a quorum at the time this instruction was discussed, the Committee did not vote on these changes and agreed to do so at the next meeting.

4. *CV632A “Minimum Injury Requirements” - Definitions*

- The Committee determined that it would be more consistent with the rest of the MUJI instructions to separate the various defined terms within the “Minimum Injury Requirements” instruction into their own, separate instructions. The four terms in this instruction were separated into CV632A – D as follows:
  - 632A – “Permanent Disability” Defined.
  - 632B – “Permanent Impairment” Defined.
  - 632C – “Permanent Disfigurement” Defined.
  - 632D – “Objective Findings” Defined.
- The Committee made small edits to the various definitions consistent with *Pinney v. Carrera*, 2019 UT App 12, 438 P.3d 902, and *Pinney v. Carrera*, 2020 UT 43, 469 P.3d 970, 978.
- Without a quorum at the time this instruction was discussed, Ms. McAllister suggested a clean copy of the suggested changes be circulated to the remainder of the Committee for review and later approval.

- Jace Willard will look at the referenced cases to ensure the correct paragraphs are cited.

#### 5. *Avoiding Bias Instruction*

- Judge Kelly received feedback from the Board of District Court Judges and updated the draft instruction to include those proposed edits. The Committee discussed the proposals in turn.
- Judge Kent Holmberg joined the meeting during discussion of this instruction, creating a quorum.
- The Committee approved the edits and recommended the instruction be published for comment.
- The Committee unanimously voted to ratify the suggested changes and publish the revised instruction for public comment.

#### 6. *CV920 Easement Defined.*

- The Committee debated whether it was necessary to include a comment to the instruction regarding whether there is a right to a jury trial in a prescriptive easement case. The Committee decided to table the issue until the next meeting.

#### 7. *CV941 Easement by Implication. Elements.*

- Subcommittee member Adam Pace questioned whether a separate instruction defining the term “continuous” in element four is necessary as its meaning is not clear or consistent in the case law.
- Mr. Fuller expressed concern that providing a separate instruction for the term “continuous” could cause more problems than solutions since different precedent suggests different standards for the term. He further notes that this language comes directly from a 2019 Court of Appeals case—*Bridge BLOQ NAC LLC v. Sorf*.
- The Committee decided to leave element four as drafted and include as a reference *Bridge BLOQ NAC LLC v. Sorf, 2019 UT App 132, 447 P.3d 1278, 1282*.
- The Committee agreed to add to the Committee Notes that “the meaning of the term ‘continuous’ may depend on the factual circumstances of the case. The Committee therefore determined not to draft a separate definitional instruction. The parties may need to modify the fourth element depending on the factual circumstances of the case to elaborate on the meaning of the term ‘continuous.’”

#### 8. *CV922 Prescriptive Easement. Elements of a Claim and CV924 Prescriptive Easement. “Adverse” Defined.*

- The Committee considered revisions to the second paragraph of draft CV924 and the possible need for revisions to draft CV922 pursuant to feedback received from Chris Hogle.
- The Subcommittee agreed to review Mr. Hogle's comments for these instructions and the need to add other instructions and return at a later date to finalize the instructions.
- The easement by necessity and implication instructions require no further changes and are ready for a vote at the next meeting.

9. *Adjournment.*

The meeting concluded at 6:09 PM.