

MINUTES

Advisory Committee on Model Civil Jury Instructions

July 10, 2023

4:00 p.m.

Present: Judge Kent Holmberg, Judge Keith A. Kelly, Lauren A. Shurman, Alyson McAllister, Douglas G. Mortensen, William Eggington, Mark Morris, John Macfarlane, Michael D. Lichfield, Adam D. Wentz, Jace Willard.

Also present:

Excused: Ricky Shelton

1. *Welcome*

Alyson McAllister welcomed the Committee.

2. *Approval of Minutes.*

May meeting minutes approved with Jace Willard's corrections.

3. *CV632 Threshold/Minimum Injury Requirements*

- Reviewed changes to the instruction made in prior meetings.
- Michael Lichfield suggested that the language "based on something other than [plaintiff's] own testimony..." located within CV632D, "Objective Findings," is not a complete definition. His concern was that the language did not fully capture the fact that the finding must be based on externally verifiable evidence, supported by something other than the plaintiff's own subjective testimony, as outlined by precedent.
- The Committee agreed and drafted new language to capture this complete definition. ("...based on externally verifiable evidence; that is, the finding must be based on something other than plaintiff's own subjective testimony.")
- The committee also removed the final clause of CV632D, "such as testimony of an expert of [plaintiff's] treating physician" and instead included it in a Committee Note.
- Motion to adopt CV632 and subsequent definitions, CV632A through CV632D, was unanimously approved.

4. *CV930 Easement by Necessity. Introduction.*

- This instruction was discussed and revised during a prior meeting, but the Committee did not have a quorum to vote on the same.

- Mark Morris questioned whether an easement by necessity must include a public highway specifically. If not, he suggested that the Committee modify the bracketed language “public highway.”
- The Committee considered the precedent and relevant statute and determined that “public highway” is likely too narrow a definition. It agreed to change the bracketed language to “public road” instead.
- Ms. McAllister suggested including a Committee Note providing further explanation regarding public road. The Committee drafted a note: “The term ‘public road’ is meant to be illustrative only and it may be appropriate to replace it with a more specific description in a given case.”
- Motion to adopt CV930 was unanimously approved.

5. *CV931 Easement by Necessity. Elements of a claim for access to landlocked property.*

- This instruction was discussed and revised during a prior meeting, but the Committee did not have a quorum to vote on the same.
- Ms. Sherman suggested the removal of the word “that” at the beginning of paragraph (2). The Committee agreed.
- Motion to adopt CV931 was unanimously approved.

6. *CV940 Easement by Implication. Introduction.*

- This instruction was discussed and revised during a prior meeting, but the Committee did not have a quorum to vote on the same.
- Ms. McAllister suggested placing brackets around the terms “Parcel A” and “Parcel B” to allow for inserting specific parcel identifiers on a case-by-case basis. Committee agreed.
- Bill Eggington questioned whether the term “apparent” is easily understood language. The Committee debated whether to change it to “obvious.” The precedent from the Utah Supreme Court and Utah Court of Appeals was unhelpful as it was inconsistent. It sometimes used “apparent **or** visible” and other times “apparent, obvious **and** visible.” The Committee determined to make a Committee Note identifying the discrepancy.
- Motion to adopt CV940 was unanimously approved.

7. *CV941 Easement by Implication. Elements.*

- This instruction was discussed and revised during a prior meeting, but the Committee did not have a quorum to vote on the same.
- The Committee Note to CV940 regarding “apparent and/or visible” was added to CV941 as it was equally relevant.

- Additional case citation was added.
- Motion to adopt CV941 was unanimously approved.

8. *Bill Eggington gave linguistic presentation on the term “reasonable.”*

The meeting concluded at 5:52 PM.