

MINUTES

Advisory Committee on Model Civil Jury Instructions

October 11, 2023

4:00 p.m.

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

Excused: Adam Wentz

1. Welcome

Alyson McAllister welcomed the Committee.

2. Approval of Minutes

September meeting minutes approved.

3. Public Comment to CV632, CV632A-CV632D

Mr. Willard noted that one public comment had previously been received but not presented to the Committee as to several published instructions (CV632, CV632A, CV632B, CV632C, and CV632D) that were approved as final at the September 11, 2023 Committee meeting. The Committee viewed the public comment as expressing a desire for a change to the relevant law rather than to bring the instructions at issue into conformity with the law as it presently exists. Accordingly, no action was taken as a result of the comment.

4. CV132A Remote Testimony.

Mr. Macfarlane presented proposed instruction CV132A, addressing the assessment of witness credibility based on whether the witness appears remotely rather than in person. When it was first presented to the Committee in September, the draft instruction was combined with existing CV132, concerning out-of-state or out-of-town witnesses. It is now an entirely separate instruction with a more limited focus. Mr. Shelton moved to approve the instruction. Judge Kelly seconded the motion. Unanimously approved.

5. CV2021 Present Cash Value, Committee Notes.

The Committee addressed the need to update the Committee Notes for CV2021 in light of a footnote in a recent Utah Court of Appeals decision indicating that “while having an expert testify about [the present value] calculation is usually preferred, such expert testimony is not required when a party like [the plaintiff] claims future damages.”

Brinkerhoff v. Fleming, 2023 UT App 92, ¶ 19 n.4. Ms. McAllister reviewed the case and concluded that the plaintiff referenced in the footnote was an ordinary plaintiff in a typical tort action arising from an automobile accident, so the footnote does not appear to be limited to a plaintiff with special qualifications. Ms. McAllister also reviewed *Schlatter v. McCarthy*, 113 Utah 543, 196 P.2d 968, referenced in the existing Committee Notes. Ms. McAllister proposed inserting a summary of the *Brinkerhoff* footnote as the second to last paragraph of the Committee Notes, and adding “without expert testimony” to the sentence summarizing the holding from *Schlatter*. Mr. Mortensen moved to so update the Committee Notes. Mr. Harman seconded the motion. Unanimously approved.

6. *Other Projects*

- The Committee reviewed the assignments in the queue. Ms. McAllister will see about finding some new members for the CV2400 Insurance subcommittee. Mr. Willard to add the Jury Instruction Linguistic Review Subcommittee to the queue, which will include Professor Eggington’s ongoing research re the meaning of “reasonable.”

The meeting concluded at approximately 5:00 PM.