

MINUTES

Advisory Committee on Model Civil Jury Instructions
January 8, 2024
4:00 p.m.

Present: William Eggington, John Macfarlane, Stewart Harman, Ricky Shelton,
Michael D. Lichfield, Benjamin Lusty, Jace Willard (staff)

Excused: Alyson McAllister, Douglas G. Mortensen, Mark Morris

Guests: Robert C. Cummings

1. *Welcome*

Jace Willard welcomed the Committee.

2. *Approval of Minutes*

November meeting minutes approved.

3. *Welcome to Benjamin Lusty*

The Committee welcomed new member, Benjamin Lusty. Committee members introduced themselves and Mr. Lusty introduced himself.

4. *Recording Secretary Vacancy*

Mr. Willard noted that the Committee has a vacancy for a recording secretary to keep meeting minutes and invited Committee members to advise if they are aware of parties interested in filling that role.

5. *CV132A Remote Testimony - Public Comments*

Mr. Willard noted that no public comments were received regarding the recently published new instruction, CV132A (Remote Testimony). The Committee voted to formally adopt CV132A.

6. *CV2021 Present Cash Value – Public Comments*

Mr. Willard presented a public comment received regarding the recent amendment to the Committee Notes for CV2021 (Present Cash Value). After consideration of the comment, the Committee determined that no further change to this instruction or the Committee Notes is warranted at this time and voted to formally adopt the amendment as published.

7. *CV925A (Adverse Presumption) and CV925B (Overcoming Adverse Presumption)*

Robert Cummings presented CV925, a draft instruction regarding how a presumption of adverse use may be established in prescriptive easement cases, and ways such a presumption may be rebutted. Some members of the Committee were concerned as to whether language regarding how to “rebut” the presumption, and shifting of the burden, would be confusing to a jury. The Committee discussed potential ways to simplify the language of the instruction. Ultimately, the Committee agreed that the instruction should be divided into two separate instructions, CV925A (Adverse Presumption) and CV925B (Overcoming Adverse Presumption). The term “rebut” in the latter instruction was changed to “overcome,” and the two different ways the presumption may be overcome were set forth in bullet points. The Committee tentatively approved this instruction with a more definitive vote to be held when other members of the Committee are present at the next meeting. If approved, this will conclude the pending draft real property easement instructions.

8. *Adjournment*

Without further business, the meeting concluded at approximately 5:25 PM.