

MINUTES

Advisory Committee on Model Civil Jury Instructions
February 12, 2024
4:00 p.m.

Present: Alyson McAllister, William Eggington, Stewart Harman, Michael D. Lichfield, Benjamin Lusty, John Macfarlane, Mark Morris, Douglas G. Mortensen, Ricky Shelton, Jace Willard (staff)

Excused:

Guests: Robert J. Fuller

1. *Welcome*

Alyson McAllister welcomed the Committee.

2. *Approval of Minutes*

January meeting minutes approved.

3. *Recording Secretary Appointment*

Ms. McAllister noted that Kara North has been appointed to serve as the recording secretary for the Committee and will begin serving in that role at the March meeting.

4. *Changes to Draft CV920 – CV926 Prescriptive Easement Instructions*

Ms. McAllister led the Committee’s review of a series of proposed prescriptive easement instructions drafted in consultation with a subcommittee led by Robert J. Fuller. No additional changes were made as to CV920 or CV921. Bill Eggington proposed grammatical changes to CV922 that were incorporated. A Committee Note referencing CV118’s definition of clear and convincing was moved to CV922. Other draft instructions were renumbered to correspond with the order of the elements as set forth in CV922. CV923 defining “continuous” was otherwise unchanged. Added or altered references were made to CV924 defining “open and notorious,” CV925 defining “adverse,” and CV926A regarding the adverse presumption. A Committee Note was added to CV926B stating that the presumed standard of proof for rebutting the presumption is the preponderance of the evidence.

5. *Changes to Draft CV930 – CV931 Easement by Necessity Instructions*

Ms. McAllister next led the Committee’s review of proposed easement by necessity instructions that were also drafted with Mr. Fuller’s subcommittee. No substantive changes were made to draft CV930. The term “person” in CV931 was changed to “landowner.”

6. *Changes to Draft CV940-CV941 Implied Easement Instructions*

Ms. McAllister next led the Committee's review of proposed implied easement instructions that were also drafted with Mr. Fuller's subcommittee. The term "owner" in draft CV940 was changed to "landowner." The Committee discussed inconsistent statements in *Tschaggeny v. Union Pac. Land Resources Corp.*, 555 P.2d 277, 280 (Utah 1976), with the Court using both "apparent or visible easements" and "apparent, obvious, and visible" in defining an implied easement. CV940 was changed to use the conjunctive formulation, based on its inclusion in the more recent case, *Bridge BLOQ NAC LLC v. Sorf*, 2019 UT App 132, ¶ 24, 447 P.3d 1278, 1282. The *Sorf* case was added to the CV940 references, and the Committee Notes were altered to highlight the inconsistency.

In CV941, the term "person" was changed to "landowner" in subparagraph (1) and the term "across" was changed to "[across/on]" to clarify the nature of potential implied easements. The Committee Notes for this instruction were also changed to explain that, to make the instructions more understandable for jurors, the terms "transferred" and "retained" are used in place of "dominant" and "servient."

7. *Approval for Publication of CV920-CV926, CV930-CV931, and CV940-CV941.*

Following the above review, the Committee voted to approve for publication the modified draft instructions CV920-CV926, CV930-CV931, and CV940-CV941.

8. *Adjournment*

Without further business, the meeting concluded at approximately 5:15 PM.