

MINUTES

Advisory Committee on Model Civil Jury Instructions

December 9, 2024

4:00-6:00 pm

Present: Alyson McAllister, Ben Lusty, Bill Eggington, John Macfarlane, Michael D. Lichfield, Ricky Shelton, Stewart Harmon, Doug G. Mortensen, Judge Brian D. Bolinder, Jace Willard (staff), Kara H. North (staff).

Guests: Robert Fuller, Robert Cummings, Monica Howard.

Excused: Mark Morris

1. Welcome and Approval of Minutes

Ms. McAllister welcomed the Committee. The Minutes from the September meeting were approved.

2. Public Comments re: CV301C “Standard of Care” and CV2015 “Survival Claim”

Ms. McAllister notes that there were no public comments received as to the recent changes to CV301C and CV2015; therefore, no additional changes will be made.

3. Public Comments re: CV920, CV922, CV923 Easements

With respect to CV920, comments were received regarding adding the word “unreasonably” as it frequently appears in the case law. The Committee discussed this section with the assistance of Mr. Robert Fuller, who agreed that adding “unreasonably” to the definition would be consistent with the case law regarding easements. It was agreed to add cases to the references, including *Wykoff v. Barton*, 646 P.2d 756 (Utah 1982), and *Metro Water District of Salt Lake & Sandy v. SHCH Alaska Tr.*, 2019 UT 62, 452 P.3d 1158.

Regarding CV922, public comments centered on concerns about the need to make the language clearer. This was supported from a linguistic standpoint by Mr. Eggington. After some discussion regarding the redline edits, the Committee agreed to move the “that” and added a comma, as suggested in the comments. The motion to accept these changes was unanimously approved.

With respect to CV923, public comment was received suggesting the addition of a required mental state, and about the property being “physically used.” The Committee discussed some of the difficulties with including a mental state with respect to property cases. The Committee discussed whether it would be more appropriate for there to simply be a reference in the comments that in certain cases the mental state of one of the parties may be applicable with reference to the case of *Harrison v. SPAH Family, Ltd.*, 2020 UT 22, paras. 31, 41-43, 466 P.3d 107, 116-117. After consideration, the Committee unanimously approved the addition of a comment, and decided to reject the addition of other language.

4. CV1710 Revised Draft of False Imprisonment Instruction

With the assistance of Monica Howard, the Committee discussed whether the terms “confined” and “restrained” were duplicative or had different connotations. Similar discussion was had regarding the use of “detained,” instead of “confined” or “restrained,” but there was concern that “detained” may imply a connotation of someone acting with official authority. The Committee ultimately agreed to use “confined, restrained, or detained,” throughout the instruction to capture the different ways false imprisonment can occur.

The Committee discussed how the confinement, restraint, detention occurs, through “physical force, verbal threats, or any other actions that would reasonably lead [the person] to believe [they are] not free to leave,” and how they may need to distinguish from situations where someone is being lawfully detained, like by the police, versus unlawfully detained. Overall, the Committee worked to refine the language and structure of the definition to clearly convey the different elements required, while attempting to avoid overly technical or complex language. The Committee adopted the changes unanimously.

5. CV1720 and CV1721 Revised Draft of Malicious Prosecution Instructions

The Committee reviewed CV1720 regarding Malicious Prosecution. Ms. Howard suggested the Committee look to the Restatement (Second) of Torts § 660 should the question of innocence need to be evaluated. The Committee agreed and added a comment to that effect. The Committee further agreed to amend draft CV1721, changing “initiating or helping to initiate” to “beginning or continuing” and changing “reasonable man” to “reasonable person.”

6. CV1700 and CV1701 Revised Draft Assault Instructions

The Committee discussed changes to the assault instructions, including defining “harmful or offensive conduct.” There was a question about whether or not to replace “imminent” with the word “impending” and to simplify some of the phrasing. The lawyers clarified for non-lawyers on the Committee that actual physical contact is not required for an assault to have taken place. In CV1700, the Committee agreed to change “acted with the intent” to “acted intending to,” and changed “in imminent apprehension” to “in fear of an immediate.” The Committee also added a statement indicating that “[p]hysical contact does not have to occur.” In CV1701, the Committee changed the definition of “harmful or offensive conduct.” The vote to adopt these changes was unanimous. There was discussion about evaluating whether there needed to be a separate instruction for battery. Ms. McAllister will consult her contacts as to why no battery instruction was included in MUJI 1st. If a battery instruction is needed, Ms. Howard can help with that.

7. Public Comments re: CV107A Avoiding Bias

CV107A instructs jurors to consider whether their opinion of parties or witnesses would be different if “they spoke in a more educated manner.” A public comment suggested they should also consider whether it would be different if they spoke in a less educated manner. The Committee agreed that using the phrase “more or less educated” was more neutral in presentation and covered

both perspectives and the need to avoid potential bias. All on the Committee agreed with this change.

8. Public Comments re: CV2021 Present Cash Value

CV2021 instructs jurors that if they decide a plaintiff is entitled to damages for future economic losses that “the amount of those damages must be reduced to present cash value.” A public comment suggested using the word “adjusted” rather than “reduced” to reflect that in certain circumstances the amount must be increased rather than decreased. After hearing from Mr. Eggington and others, the Committee unanimously agreed that “adjusted” was the most accurate and neutral word to avoid biasing the jury’s understanding of the calculations and adopted that into the rule.

9. Public Comments re: CV324 Use of Alternative Treatment Methods

The Committee considered public comments to CV324 but determined that the issues raised were fully addressed on this topic back in May, and no further discussion was needed.

10. Conclusion

The Committee discussed that the next meeting is set for January 13, 2025. The Committee believes that additional individuals, particularly defense attorneys, will need to be consulted with respect to product liability instructions.