

# MINUTES

## SUPREME COURT'S ADVISORY COMMITTEE ON THE MODEL UTAH JURY INSTRUCTIONS – CRIMINAL

Administrative Office of the Courts  
450 South State Street  
Salt Lake City, Utah 84114

Judicial Council Room  
Wednesday, August 7, 2013  
12:00 p.m. to 2:00 p.m.

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### PRESENT

Judge Denise Lindberg – Chair  
Mark Field  
Sandi Johnson  
Linda Jones  
John West  
Scott Young

### EXCUSED

Judge Brendan McCullagh  
Professor Jensie Anderson  
Karen Klucznik  
Matt Lewis

### STAFF

Alison Adams-Perlac  
Diane Abegglen

#### 1. Welcome and Approval of Minutes

Judge Lindberg welcomed the committee and introduced Ms. Adams-Perlac who will be staffing the committee. Judge Lindberg expressed appreciation for Brent Johnson's efforts as staff to the committee. The present members of the committee introduced themselves.

*Ms. Jones moved to approve the minutes from the June 5, 2013 meeting. Mr. Field seconded the motion. The motion passed unanimously.*

Judge Lindberg discussed three items of old business with the committee. First, Judge Lindberg asked for an update on progress with updating Judge Taylor's instructions. Ms. Jones stated that she and Ms. Klucznik received about 34 instructions from Judge Taylor. Ms. Jones stated that she has formatted half of them, and that she will format the other half before the September meeting.

Judge Lindberg discussed the previous instructions drafted by Judge Himonas's subcommittee, including an instruction on child pornography, which the committee had previously tabled. The committee discussed the need for instructions on old and new versions of the sex crime statutes, since they change so frequently. Ms. Jones suggested that the committee include committee notes on instructions involving sex crimes including the date and a note to check the instructions against the current statute. The committee agreed to revisit the instructions drafted by Judge Himonas's committee at a later meeting.

Judge Lindberg stated that she reviewed minutes from prior meetings and she will be bringing items back to the committee for follow-up.

## 2. Unlawful Sexual Conduct with a Minor

Ms. Johnson discussed the proposed instructions and Special Verdict Form she drafted for unlawful sexual conduct with a 16 or 17 year old. She discussed that the instruction needs to direct the jury to indicate which of the four acts of sexual conduct they find the defendant guilty of, since the acts have different classifications. Ms. Jones suggested adding the word “unanimously” to the Special Verdict Form. Ms. Adams-Perlac suggested adding “with intent to cause substantial emotional or bodily pain to any person” under section 4 on the sexual conduct instruction and bullet number 4 of the Special Verdict Form, since the statute includes it as a possible mens rea for that offense. Judge Lindberg suggested deleting “regardless of the sex of any participant” in sections 3 and 4 on the sexual conduct instruction and bullets 3 and 4 on the Special Verdict Form. Ms. Jones noted that the unlawful sexual conduct with a minor instruction needs language addressing general intent (intentionally, knowingly, or recklessly) as required by case law from the Utah Court of Appeals, and that these should be added to each instruction. The committee discussed putting the elements in a committee note.

Ms. Johnson will work on the unlawful sexual conduct with a minor and sexual conduct instructions, including adding intent language. She will send them to Ms. Adams-Perlac for circulation to the committee before the next meeting.

The committee discussed using initials versus using names with minors and alleged victims. Ms. Jones disagreed with using initials for adult alleged victims, since it signals to the jury that the alleged victim needs special protection. Ms. Johnson suggested that the committee adopt the policy of using initials when the alleged victim is a minor, and using names for adult alleged victims, unless the court decides that the alleged victim’s name needs to be protected. Ms. Jones suggested that the committee’s policy be as neutral as possible, and suggested that the committee adopt a policy that initials should be used when the alleged victim is a minor, and that names of adult alleged victims should be used. She suggested adding a note at the beginning of the instructions that initials may be used for an adult alleged victim if there is a judicial finding made regarding why it is appropriate. Ms. Adams-Perlac agreed to draft proposed language for the committee note and will circulate it before the next meeting.

*Ms. Jones moved the committee to adopt the policy that: 1) minor’s initials will be used in jury instructions, and 2) that names will be used for adult alleged victims, unless 3) the court makes a judicial finding warranting the use of initials for an adult. Mr. West seconded the motion. The motion passed unanimously.*

## 3. Jailhouse Informant

The committee discussed the proposed jailhouse informer instruction. Judge Lindberg suggested calling it “Jailhouse Informant/Accomplice”, since the instruction applies to accomplices. The committee discussed that an instruction is necessary based on *State v. Charles*, 2011 UT App 291. The committee discussed concerns about the title of the instruction suggesting bias. Ms. Jones stated that the instruction should only apply to a case that has an informant like the one in *Charles*. Judge Lindberg discussed changing the title to “In-custody Informant.” The committee discussed whether the instruction should apply to accomplices. Mr. West noted the difference between informants and accomplices. Ms. Jones stated that the instruction should not be taken farther than the law requires. She suggested the committee limit the instruction to informants like the one in *Charles*, and then add a committee note referencing *Charles*. Ms. Jones suggested tabling the instruction, since *Charles* gives guidance on the issue. She also stated that the committee notes should be neutral.

The committee agreed to change the title to “In-custody Informant”, and to delete “accomplice” from the instruction. The instruction will be recirculated with those changes and will be discussed at the next meeting.

Mr. West raised the concern of multiple copies of the meeting materials being printed. The committee discussed this issue and agreed that Ms. Adams-Perlac will send the meeting materials in an electronic format (that can be manipulated) prior to the meeting, and that everyone will review the materials prior to the meeting and print them from their office. Ms. Adams-Perlac will bring only a few copies of the materials to the next meeting.

#### **4. Object Rape**

The committee discussed the proposed object rape instruction. Ms. Johnson asked whether special verdict forms for these offenses exist. The committee agreed that they do not have these forms. Ms. Johnson stated that she has some and she will email them to Alison Adams-Perlac for circulation before the next meeting. Ms. Johnson discussed whether the general intent language should be a subsection. The committee agreed that the language works where it is. Ms. Johnson suggested breaking section 6 into subsections, and adding victim’s name or minor’s initials in sections 4, 6, and 7 where a victim or person is addressed. Ms. Jones suggested that the committee delete the semi-colons or do not punctuate the instruction. Judge Lindberg stated that the committee has used semi-colons in prior rules. The committee discussed removing “who is 14 years or older”, since age is not an element of object rape.

The committee agreed to break section 6 into subsections, and to add victim’s name or minor’s initials in sections 4, 6, and 7 where a victim or person is addressed. The committee also agreed to remove the age language. With these changes, Ms. Johnson will recirculate this instruction for review prior to the next meeting.

#### **5. Object Rape of a Child**

The committee discussed the proposed object rape of a child instruction. The committee agreed to break section 6 into subsections, and to add victim’s name or minor’s initials in sections 4, 6, and 7 where a victim or person is addressed as in the object rape instruction. With these changes, Ms. Johnson will recirculate this instruction for review prior to the next meeting.

#### **6. Adjourn**

Judge Lindberg stated that the committee will discuss the organization of the instructions at a future meeting. The committee will discuss changes to the proposed instructions for in-custody informant, object rape, and object rape of a child, as well as the proposed instructions for forcible sodomy and sodomy on a child at the next meeting. The next meeting will be held September 4, 2013 at 12:00 p.m. The meeting adjourned.