

# Agenda

## Advisory Committee on Model Civil Jury Instructions

September 8, 2008  
4:00 to 6:00 p.m.

Administrative Office of the Courts  
Scott M. Matheson Courthouse  
450 South State Street  
Judicial Council Room, Suite N31

Approval of minutes	Tab 1	John Young
Contract Instructions	Tab 2	Bruce Badger Gary Johnson
Product Liability Instruction 1057	Tab 3	John Young
Med Mal Instruction 324	Tab 4	John Young

**Committee Web Page:** <http://www.utcourts.gov/committees/muji/>

**Published Instructions:** <http://www.utcourts.gov/resources/muji/>

**Meeting Schedule:** Matheson Courthouse, 4:00 to 6:00 p.m.

September 22, 2008	Motor Vehicles
October 14, 2008	Premises Liability
October 27, 2008	Insurance Obligations
November 10, 2008	Construction Contracts
December 8, 2008	Intentional Torts / Fraud and Deceit
January 12, 2009	Eminent Domain
February 9, 2009	Probate
March 9, 2009	Professional Liability
April 13, 2009	Employment

# Tab 1

## ***MINUTES***

Advisory Committee on Model Civil Jury Instructions

August 11, 2008

4:00 p.m.

Present: John L. Young (chair), Francis J. Carney, Dr. Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Gary L. Johnson, Stephen B. Nebeker, Timothy M. Shea, Paul M. Simmons, Peter W. Summerill. Also present: P. Bruce Badger, Katie Carreau, Todd Shaughnessy, Elliott J. Williams

1. *Medical Malpractice Instruction CV324. Use of alternative treatment methods.* Mr. Carney noted that he had cleaned up the instruction and the committee note. He indicated that the instructions were generally agreed to as a group and that the defense attorneys on the medical malpractice subcommittee had made concessions. Mr. Carney noted that this was an instruction that the defense bar felt strongly about. Mr. Carney was concerned that, if the instruction was rejected, the defense bar may want to go back and revisit all the medical malpractice instructions. Mr. Carney noted that he personally might not favor the instruction in the abstract, but he recommended that the committee approve the instruction. Mr. Williams spoke in favor of the instruction, noting that it has a long history, beginning with a California pattern instruction and continuing through JIFU and MUJI 1st. He said the instruction was an effort to give effect to what doctors would expect the law to be. He said that the plaintiffs' attorneys on the MUJI 1st committee did not have a problem with it. He noted that the subcommittee voted 3-1 in favor of the instruction. The committee voted to approve the instruction, with Messrs. Carney, Fowler, Johnson, and Nebeker voting in favor of the instruction, and Mr. Simmons abstaining. Mr. Williams was excused.

Messrs. Ferguson and Summerill joined the meeting. Mr. Summerill expressed concern that the committee had voted on the instruction without him. He objected to the phrase in the instruction that says "it is not medical malpractice" to select an approved alternative method of treatment and proposed revising the instruction to read:

When there is more than one method of [diagnosis/treatment etc.] that is approved by a respectable portion of the medical community, and no particular method is used exclusively by all providers, you may consider that in determining whether or not the physician failed to follow the standard of care as outlined above. The provider has the burden to prove that the method used is approved by a respectable portion of the medical community.

He also proposed cross-referencing CV301, which defines the standard of care. Mr. Young was reluctant to reopen the matter since Mr. Williams had not seen the proposal and had been excused, but he indicated that Mr. Summerill could bring the matter back to the committee at its next meeting if the subcommittee approved it. Mr. Carney said that he would be willing to take Mr. Summerill's proposal back to the subcommittee and see if the subcommittee would be willing to revisit the issue.

































































