

MINUTES

Advisory Committee on Model Civil Jury Instructions

October 8, 2003

4:15 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, Paul M. Simmons

Excused: Honorable William W. Barrett, Jr., L. Rich Humpherys, Colin P. King

1. *Minutes.* The committee approved the minutes of the July 9, 2003, meeting.

2. *Plain Language Writing Workshop.* The committee discussed preparations for the October 25, 2003, workshop on writing plain-language jury instructions. Mr. Shea reported that a request for CLE credit is pending. The workshop will be videotaped. Mr. Shea will send out an announcement and invitation to all members of the committee and all subcommittees tomorrow asking for a prompt RSVP. Judges have also been invited to attend. Next week an invitation will be extended to the members of the Bar's Litigation Section, with a notice that seating is limited. It was agreed that seating should be limited to no more than 100 participants. Dr. Di Paolo reported that the Department of Linguistics at the University of Utah will pick up Dr. Dumas and entertain her Friday evening. It was agreed that Mr. Young, Mr. Shea and Dr. Di Paolo would take Dr. Dumas to dinner Saturday night.

Any other members of the committee who would like to attend the dinner Saturday evening with Dr. Dumas should let Mr. Young know.

3. *Subcommittees.*

a. *Composition and Chairs.* The committee reviewed a list of subcommittees and their members. Mr. Young has asked the following people to chair subcommittees: Robert Wallace (Civil Rights); Alan Sullivan (Contracts: Commercial); Kent Scott (Contracts: Construction); Rich Humpherys (Damages; Mr. Humpherys and Mr. Belnap were previously serving as co-chairs); Jathan Janove (Employment); George Haley (Fraud & Deceit); Paul Belnap (Insurance Company Obligations); Robert Anderson (Intentional Torts, which will include business torts); Frank Carney (Negligence); Jay Gurmankin (Officers, Directors, Partners, and Insiders Liability); Phillip Ferguson (Preliminary and General Instructions; Mr. Ferguson replaces Mr. Dewsnup as the chair of this subcommittee); Robert Morton (Premises Liability); Tracy Fowler (Product Liability); Craig Mariger (Professional Liability: Architects, Engineers); Robert Gilchrist (Professional Liability: Lawyers, Accountants); Ralph Dewsnup (Professional Liability: Medical Negligence); Charles Bennett (Will Contests). Mr. Young has also asked the members of the subcommittees to serve on them and has invited them to attend the workshop on October 25. Mr. Young reported that he has not had any response from the

faculties at the law schools at the University of Utah and Brigham Young University to his request for participation in the subcommittees. The subcommittee chairs may contact faculty members directly if they desire.

Mr. Shea will circulate an updated list of the subcommittees and their members.

b. *FELA Subcommittee.* Mr. Young spoke to Brent Hatch about the need for a subcommittee to cover Federal Employer's Liability Act claims. Mr. Hatch did not think there was a need for such a subcommittee. Mr. Young will ask Mr. Hatch to serve on the Contracts: Commercial subcommittee.

c. *Negligence and Motor Vehicle Subcommittees.* It was agreed that the Negligence subcommittee would cover ultrahazardous activities and electricity. Mr. Carney suggested that a separate subcommittee be formed to cover motor vehicle accidents and that Bob Gilchrist be asked to chair the subcommittee.

Mr. Young will talk to Mr. Gilchrist about chairing the Motor Vehicle subcommittee.

The following attorneys were suggested as members of the Motor Vehicle subcommittee: Steve Sullivan, Vicky Kidman, Lynn Davies, Barbara Maw, Pete Petersen, Stuart Schultz, David Mortensen, Terry Plant, Ted Kanell, Tad Draper, Jack Helgesen, Scott Waterfall, Chris Shaw, Erik Ward, Kevin Sutterfield, Mark Flickinger, David Lambert and Nelson Abbott.

d. *Wills Subcommittee.* Mr. Ferguson suggested that the scope of the subcommittee should perhaps be expanded to include other probate matters, guardianships and trusteeships. He also suggested that Kent Alderman serve on the committee.

Mr. Young will talk to Charles Bennett or Mr. Alderman or both to see if they think the scope of the subcommittee should be expanded.

4. *Priorities.* The committee established the following priorities for completing instructions:

a. *First group:* Preliminary and General Instructions; Contracts: Commercial; Negligence; and Damages.

b. *Second group:* Employment; Motor Vehicles; Premises Liability.

- c. *Third group:* All Professional Liability instructions; Products Liability.
- d. *Fourth group:* Fraud & Deceit; Officers, Directors; Insurance; Contracts: Construction.
- e. *Fifth group:* Everything else (Civil Rights; Intentional Torts; Wills).

5. *Timing.* The following schedule was established for subcommittees to submit their initial drafts to the full committee:

- a. *Negligence:* December 1, 2003.
- b. *Preliminary and General Instructions; Damages:* February 1, 2004.
- c. *Contracts: Commercial:* March 1, 2004.
- d. *Employment:* April 1, 2004.
- e. *Premises Liability:* May 1, 2004.
- f. *Motor Vehicles:* June 1, 2004.

Dr. Di Paolo recommended that subcommittee drafts be circulated to other subcommittees as they are finished to reinforce the principles of good draftsmanship that will be taught in the October 25 seminar.

6. *Alternative Instructions.* Mr. Young reported that Ms. Branch had asked the Utah Supreme Court whether the committee should propose instructions in areas where there is no clear Utah law. The court was not in favor of instructions in unsettled areas of the law. After some discussion, however, the committee agreed that it would be helpful to offer instructions, including alternative instructions in some cases, even if there is no Utah Supreme Court decision on point, since the bench and the bar will look to the instructions as a research source, and some such instructions may be necessary for the instructions to be complete. The committee agreed that subcommittees should draft such instructions. The committee will review them and decide later whether to raise the issue again with the court. The goal, however, should be to have as few alternative instructions as possible.

7. *Next Meeting.* The next meeting will be Wednesday, November 12, at 4:00 p.m.

The meeting concluded at 5:35 p.m.