

MINUTES

Advisory Committee on Model Civil Jury Instructions

December 8, 2003

4:15 p.m.

Present: John L. Young (chair), Timothy M. Shea, Honorable William W. Barrett, Jr., Francis J. Carney, Marianna Di Paolo, Paul M. Simmons

Excused: Phillip S. Ferguson, Colin P. King

1. *Minutes*. Because the minutes of the October 8, 2003, meeting had not been circulated yet, the committee postponed approval of those minutes until the next meeting.

2. *Plain Language Writing Workshop*. The committee discussed the October 25, 2003, workshop on writing plain-language jury instructions. Committee members agreed that they would have liked to have had more practical suggestions.

3. *Writing Guidelines*. Mr. Young suggested that the committee adopt a set of guidelines for drafting easily understood jury instructions. Mr. Shea had previously circulated a Summary of Guidelines for Plain-Language Jury Instructions, taken from various sources.

Mr. Simmons will synthesize the materials we have on drafting plain-language jury instructions and prepare suggested guidelines for the subcommittees that the committee can review at its next meeting.

4. *Motor Vehicle Subcommittee*. Mr. Carney indicated that some of the negligence instructions were best left to the Motor Vehicle Subcommittee, which has not been formed yet.

Members should come to the next meeting prepared to suggest a chair and members for the Motor Vehicle Subcommittee.

5. *Negligence Instructions*. The committee reviewed a draft of the instructions prepared by Mr. Carney's Negligence Subcommittee, which Mr. Shea had e-mailed to committee members on December 3. The following MUJI instructions have been omitted:

MUJI 3.3 (fault/negligence not implied from injury alone) and 3.4 (unavoidable accident). These instructions have been rejected by the Utah Supreme Court. *See Green v. Louder*, 2001 UT 62, ¶¶ 14-18, 29 P.3d 628; *Randle v. Allen*, 862 P.2d 1329, 1336 (Utah 1993).

MUJI 3.19 (comparative negligence--wrongful death). Mr. Carney's subcommittee will prepare a new set of instructions for wrongful death and survival actions.

MUJI 3.20 (effect of parents' negligence). The subcommittee was not comfortable with this instruction without knowing the origin of and authority for the instruction.

MUJI 3.21 (passenger's negligence in passenger's claim against driver). The instruction was left for the Motor Vehicle Subcommittee to consider.

MUJI 3.22 (willful and wanton). This instruction was left for the Intentional Tort Subcommittee to consider.

The committee considered and revised the following new instructions:

1. **Introductory Instruction.** This instruction was simplified. In cases where the jury is asked to return a general verdict, the instruction will need to be modified, but it was agreed that general verdicts are rarely used anymore in negligence cases.
2. **Negligence Defined.** The structure of the instruction was revised, and a sentence was added to make it clear that reasonable care is what an ordinarily careful person would do in a similar situation.
3. **Standard of Care for the Physically Disabled (old MUJI 3.5).** The committee agreed to use the term "disabilities" rather than "impairments" since "impairment" could be misconstrued as something other than a physical disability.
4. **Amount of Caution Required When Children Are Involved (old MUJI 3.7).** The committee agreed to add to the instruction the requirement that the person knew or should have known that young children might be present. Mr. Carney questioned the need for this instruction and for instruction 6 (dealing with electricity), since they are specific applications of the general instruction that the amount of care required depends on the circumstances, including the danger involved and the foreseeable harm. The committee decided to keep the instructions, at least for the time being.
5. **Negligence Applied to Children.** The committee questioned how the jury was to evaluate the "intelligence, knowledge and experience" of the child and similar children but decided to leave this phrase in the instruction since it is used in the cases and Restatements.
6. **Amount of Caution Required in Handling Electricity (old MUJI 3.9).** The first sentence of the draft instruction was deleted since it referred to the "standard of care," a term that had not previously been used or defined.

Copies of the revised instructions are attached to these minutes.

The committee also discussed proposed instruction 7, defining "legal cause." Dr. Di Paolo proposed an alternative instruction that used the term "legally important cause." The

committee agreed that there was more authority for using “legal cause” and that it was less confusing than “proximate cause.” Mr. Carney questioned whether the first two elements of the proposed instruction were both required elements of legal or proximate cause or whether they were alternatives. The committee agreed to defer further discussion of the instruction until after the subcommittee had had a chance to reconsider it.

6. *Next Meeting.* The next meeting will be Monday, January 12, 2004, at 4:00 p.m.

The meeting concluded at 6:00 p.m.