

MINUTES

Advisory Committee on Model Civil Jury Instructions

February 9, 2004

4:10 p.m.

Present: John L. Young (chair), Timothy M. Shea, Honorable William W. Barrett, Jr., Juli Blanch, Francis J. Carney, Ralph L. Dewsnup, Marianna Di Paolo, Phillip S. Ferguson, Tracy H. Fowler, L. Rich Humpherys, Paul M. Simmons

Excused: Paul M. Belnap

1. *Minutes.* Ms. Blanch moved that the minutes of the January 12, 2004, meeting be approved. Judge Barrett 2d. The motion passed without opposition.

2. *Drafting Guidelines.* Dr. Di Paolo noted that the guidelines to limit the use of the passive voice and subordinate clauses can be overdone and that sometimes the passive voice and subordinate clauses can add clarity. The committee discussed the examples used in paragraph 24 (regarding complex sentences).

Mr. Simmons will revise paragraph 24 before Mr. Young sends the guidelines to all the subcommittee members.

Mr. Dewsnup suggested that we add a guideline discouraging italics, boldface type and other artificial means of emphasis. Dr. Di Paolo thought that some typographical signals could help the jurors' comprehension. The committee decided not to include such a guideline in the initial set of guidelines.

3. *Committee Membership.* Mr. Young noted that Elliott Williams has indicated that he is only interested in serving on the medical malpractice subcommittee. The committee discussed possible replacements for Mr. Williams. Mr. Carney suggested Dave West, who has been serving on the negligence subcommittee. Mr. Young suggested Steve Nebeker. Others who had expressed an interest in serving on the committee included Dan Larsen, James Jenkins, Rick Rose, Morris Haggerty, Don Winder, Pat Christensen, Bruce Badger, Doug Cannon, Lynn Davies and Michael Walk. The committee thought that Mr. West's and Mr. Nebeker's experience could help the committee.

Mr. Young will check with Mr. West and Mr. Nebeker to see if they would be interested in serving on the committee. If they are, he will recommend to the Supreme Court that they be added to the committee.

4. *Negligence Instructions.* The committee continued its review of the draft instructions prepared by Mr. Carney's Negligence Subcommittee.

a. *Electricity instruction.*

Mr. Carney will ask for input on this instruction from attorneys who handle electricity cases, such as Rick Rose.

b. *Instruction 10 (violation of a statute, ordinance or safety order).*

Mr. Young suggested that the court should paraphrase the requirements of the statute or ordinance rather than quoting the statute or ordinance verbatim. Mr. Dewsnup objected to the use of the term "law" for a statute or ordinance. Dr. Di Paolo suggested that jurors may not understand "statute" or "ordinance" but understand "law." Mr. Young suggested adding a sentence or two explaining what a statute or ordinance is and that it is considered "law." Several committee members thought that the prerequisites for determining whether the violation of a safety statute can be considered as evidence of negligence were for the court--not the jury--to decide. Mr. Carney suggested adding a comment explaining the preliminary determinations that the court must make before giving the instruction.

Dr. Di Paolo thought that the instruction was not clear about exactly what the jury was expected to do. Part of the problem is that, under Utah law, violation of a statute or ordinance is only evidence of negligence, which the jury is free to ignore, so even if the jury finds a violation of a statute, that does not require the jury to also find negligence, and even if the jury finds that a statute was not violated, that does not mean that the person was not negligent. (For that reason, the corresponding California instruction was not too helpful because in California a violation of a statute is negligence *per se*.) Mr. Simmons questioned whether the instruction was even necessary. Mr. Young suggested that it be included in the preliminary instructions on evidence and perhaps repeated in the substantive instructions at the end of the case.

Mr. Carney will revise the instruction in light of the committee's discussion.

c. *Definition of "fault."* The committee considered Mr. Humpherys' proposed instruction defining "fault." The intent was to allow the court to use "fault" to encompass both negligence (or other fault, such as an intentional tort or strict liability) and proximate (or legal) causation. The committee rewrote the instruction.

Mr. Carney will have the rewritten instruction for the next meeting.

d. *Proximate cause and comparative fault.* The committee deferred discussion of these instructions until the next meeting, to allow Mr. Belnap to be present.

5. *Other.* Mr. Humpherys suggested that we make instructions available as we complete them, rather than waiting for the committee to finish its work. Mr. Young indicated that his intent was to send out instructions in sections or groups of sections, beginning with the preliminary and negligence instructions.

6. *Next Meeting.* The next meeting will be Monday, March 8, 2004, at 4:00 p.m.

The meeting concluded at 6:00 p.m.