

MINUTES

Advisory Committee on Model Civil Jury Instructions

March 8, 2004

4:05 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Juli Blanch, Francis J. Carney, Marianna Di Paolo, Phillip S. Ferguson, Paul M. Simmons

Excused: Honorable William W. Barrett, Jr., Ralph L. Dewsnup

1. *Minutes.* Ms. Blanch moved that the minutes of the February 9, 2004, meeting be approved. Mr. Ferguson 2d. The motion passed without opposition.

2. *Instruction Headings.* The committee thought that the instruction headings could help jurors find particular instructions more easily. The committee agreed to add a note recommending that trial judges include the headings with the instructions and give the jury copies of the instructions to follow while the court reads them.

3. *Gender.* The committee discussed how best to deal with gender in the instructions. It was agreed that it will be less of a problem if the judge uses the actual names of the parties rather than referring to “the plaintiff,” “the defendant” or “a person.” Where possible, instructions should be worded to avoid generic personal pronouns.

Mr. Shea will review the instructions to see if references to “s/he” can be eliminated.

4. *References to Parties.* The committee preferred “the plaintiff” and “the defendant” to simply “plaintiff” or “defendant.”

5. *Negligence Instructions.* The committee continued its review of the draft instructions prepared by Mr. Carney’s Negligence Subcommittee. Mr. Shea had renumbered and edited some of the instructions previously discussed.

a. 3.01. *Verdict form.* The committee agreed to move this instruction to the end of the general and preliminary instructions, since it applies regardless of the plaintiff’s theory of liability. The committee otherwise approved the instruction unchanged.

b. 3.02. *“Negligence” defined.* “Ordinarily careful person” was changed to “ordinary, careful person” throughout. Mr. Young asked whether there was a legally significant difference between “care” and “caution.” If not, we may wish to use “care” (the more common word) throughout. Mr. Shea asked whether the sentence stating that reasonable care does not require extraordinary caution was consistent with the sentence that the amount of caution required varies with the circumstances. The committee

decided to leave the sentence in but in a modified form. The last sentence of the instruction (“You must decide . . .”) was made a separate paragraph.

c. *3.03. Standard of care for the physically disabled.* Based on the comment to this instruction, Mr. Simmons asked whether the instruction should be expanded to cover physically ill adults as well as disabled adults. After much discussion, the committee decided to leave the instruction as written pending further research on what the law requires of physically ill (but not disabled) people.

Ms. Blanch was excused.

d. *3.04. Amount of care required when children are present.* The committee changed “adults only” to “only adults” and approved the instruction as modified.

e. *3.05. Negligence applied to children.* Mr. Simmons asked whether there should be a separate instruction stating that children engaged in adult activities are held to the same standard of care as an adult. A new instruction (3.05a) was added to that effect, with a comment that it is for the court to decide whether an activity is considered an adult activity.

f. *3.06. Amount of care for dangerous activities.* The committee questioned under what circumstances the instruction would be given.

Mr. Simmons will send Mr. Carney a list of Utah cases on the subject. Mr. Carney will review the law in this area before the next meeting and, if necessary, revise the instruction accordingly.

g. *3.07. Amount of care required in controlling electricity.* Rick Rose had proposed adding a sentence to the end of the instruction that read, “This does not mean that one who supplies electricity to the public is liable without regard to fault.” The committee decided not to add the sentence. Dr. Di Paolo noted that liability was a concept that had not been introduced before and might confuse the jurors. Mr. Shea noted that the instruction does not suggest liability without fault. Mr. Carney and Mr. Simmons thought that the sentence was argumentative and not in line with recent Supreme Court cases holding that instructions telling the jury that the mere fact that an accident happened does not mean that anyone was at fault should not be given. The sentence is also not unique to electricity cases but could be added to every instruction. Mr. Ferguson suggested adding a sentence to the effect that people have a duty to be careful around power lines if they are aware of them. Mr. Carney questioned whether that was the law, since some people may reasonably assume that a downed power line has

been deactivated or may not be aware that they can receive a shock if they are close enough to the line even if they do not touch it.

h. *Violation of safety law.* Dr. Di Paolo noted that the last paragraph does not clearly explain what the jury is supposed to do. Mr. Simmons noted that the problem is that the violation of a safety law is not negligence *per se*, so the jury does not have to decide whether a safety law has been violated to decide whether or not a party was negligent. The committee will revisit the instruction at a later meeting.

6. *Schedule.* Mr. Young expressed concern with the slow progress the committee is making. He asked committee members to think of ways to streamline the process so that the instructions can be completed more expeditiously, such as by working with subcommittees on editing the instructions, so that the subcommittees have our input earlier and the instructions reach the full committee in a more polished form. Mr. Young also suggested asking the Litigation Section of the Bar for money to hire research help on issues of substantive law that arise during our discussions. Mr. Carney suggested that we may need to meet more often than once a month.

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

The meeting concluded at 6:00 p.m.