

MINUTES

Advisory Committee on Model Civil Jury Instructions

April 12, 2004

4:05 p.m.

Present: John L. Young (chair), Timothy M. Shea, Paul M. Belnap, Juli Blanch, Marianna Di Paolo, Phillip S. Ferguson, Paul M. Simmons, Honorable William W. Barrett, Jr., Ralph L. Dewsnup, Paul Belnap, Colin King, Rich Humphreys, Tracy Fowler

Excused: Francis J. Carney

1. *Gender.* The committee discussed how to deal with gender-specific pronouns in the instructions. Tim Shea reported on his communications with Paul Simmons. It was their recommendation that sentences be constructed to avoid the use of gender specific pronouns, but that, when necessary, the pronoun “he” be used. The introduction to the instructions might contain a statement that instructions should be edited to fit the circumstances of the case at hand. John Young observed that it would be easier to find the places that needed attention if the instruction contained a bracketed [she/he/it]. After discussion the committee agreed to bracket alternative pronouns whenever using pronouns cannot be avoided.

2. *Minutes.* The minutes of March 8 were approved without amendment.

3. *Research Assistance.* Mr. Young reported that he and Mr. Carney had contacted the Litigation Section to request a financial contribution to hire a law clerk. The executive committee for the Litigation Section will meet on April 14 and approval is expected. The committee decided that Mr. Young should appoint a research assistant. The committee decided that requests for research from the subcommittees should be directed to Mr. Young.

4. *Negligence Instructions.* The committee postponed its discussion of the negligence instructions until Mr. Carney could attend. Mr. Belnap observed that in the proposed draft to Instruction 3.09 on the definition of “fault,” simply referring to the cause of action raised in the case may not work for strict liability. It was suggested that we might consider the statutory phrase “actionable breach of a legal duty.” Others thought that phrase too obscure for jurors understand. Mr. Belnap inquired whether it was wise to discontinue use of the term “proximate cause” when there was so much caselaw interpreting that term. Mr. Young responded that the committee’s aim was not to abandon that caselaw, but to use a new term, one more understandable to jurors, to summarize the law.

5. The committee reviewed the draft preliminary and general instructions prepared and presented by Mr. Dewsnup, Judge Barrett and Mr. Ferguson. The committee suggested further changes, which the subcommittee will incorporate and present at the next meeting.

6. Mr. Humphreys suggested that we establish routine review of Supreme Court and Court of Appeals opinions to identify those that have an effect on jury instructions. The committee could then more timely incorporate necessary changes to the instructions.

7. The committee adjourned until May 10 at 4:00.