



**MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE**  
**Meeting Minutes of:**  
**Thursday, July 19, 2012**  
**3:00 – 5:00 p.m.**  
**Held at the Supreme Court – 8th floor conference room**

**Attendees:**

Justice Coats (Chair), Judge Dailey (Vice Chair), Judge Lichtenstein (Vice Chair), Judge Samour, and Judge Tuttle.

**Telephone participants:**

Judge Gilbert, Judge Greenacre, Judge Lammons, Judge Lemon, Judge Phillips, and Judge K. Romeo.

**Staff:**

Andrew Field (Reporter), and Penny Wagner (Technical Support).

**I. Approval of Minutes**

The Committee approved the minutes for the June 21, 2012, meeting.

**II. Committee Web Site**

The Reporter reviewed the draft materials that he had posted on the Committee's secure web site since the last meeting.

**III. Revisions to G1:01 (Culpability) and G1:06 (Complicity).**

The Committee discussed Judge Lemon's recommendations for further clarifying the language of these two instructions. Based on these proposals, as well as the related suggestions of other members, the Committee agreed to:

(1) Use the term "culpable state of mind" in Instruction G1:01.

(2) State, in Instruction G1:06, that "Complicity is not a separate crime or offense. Rather, it is a legal theory of liability by which one person may be found guilty of a criminal offense that was committed [in whole or in part] by another person." Further, the Committee asked the Reporter to revise the comment for G1:06, and to include an explanation of when it is appropriate to use the bracketed language.

#### **IV. Affirmative Defense Instructions**

The Chair reviewed several differences, both in wording and organizational structure, between COLJI-Crim. Ch. 7 (1983) and COLJI-Crim. Ch. H (2008). After an extensive discussion of the issues highlighted by the Chair, which included a review of several examples of instructions from other states, the Committee agreed:

(1) To include the following bracketed language in the elemental instructions: “that the defendant’s conduct was not legally authorized by the affirmative defense[s] in Instruction[s] \_\_\_\_.” (rather than continuing to use: “without the affirmative defense in Instruction \_\_\_\_”).

(2) To replicate the organizational structure of COLJI-Crim. Ch. H (2008) by stating the prosecution’s burden of proof at the conclusion of each affirmative defense instruction (rather than only in a single instruction encompassing all affirmative defenses, as was done in COLJI-Crim. Ch. 7 (1983)).

(3) To have the Reporter draft new language making clear that it is the prosecution’s burden to prove that at least one requirement of the affirmative defense is not met (rather than continuing to use the language of COLJI-Crim. H:01 (2008), which asks the jury to determine whether “the prosecution has *failed to disprove* beyond a reasonable doubt *any one* or more elements of the affirmative defense”)(emphasis added).

#### **V. Next Meeting**

The next meeting will be held in the same location, at the same time, on Thursday, August 16, 2012.

The Chair will set an agenda and have the Reporter distribute relevant written materials in advance of the meeting.

The Chair adjourned the meeting at 4:50 p.m.

Respectfully submitted,

Andrew Field, Reporter.