



MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE
Meeting Minutes of:
Thursday, October 17, 2013
3:00 – 5:00 p.m.
Held at the Supreme Court – 4th floor conference room #4242

Attendees:

Justice Coats (Chair), Judge Samour, and Judge Tuttle.

Telephone participants:

Judge Greenacre, Judge Lemon, Judge Phillips, and Judge Robison.

Staff:

Andrew Field (Reporter), and Penny Wagner (Court Services Analyst).

I. Approval of Minutes

The Committee approved the minutes for the September 8, 2013, meeting.

II. Reporter's Update

The Reporter informed the Committee that he has completed a draft of Chapter 42 (Motor Vehicles and Traffic), and that he is continuing to update the other completed chapter drafts with 2013 legislative changes and the most recent revisions to the drafting protocols.

III. Roundtable discussion of issues related to project completion.

The Chair asked members of the Committee to contact the Reporter if they have any suggestions to revise the list of chapters for inclusion in the initial publication. If any such requests are submitted, they will be set on the agenda as discussion points for a future meeting.

The Chair informed members of the Committee that he had asked a member of the Committee to conduct the initial review of the Reporter's draft of Chapter I (Insanity) and explained that, once that process is complete, the Reporter will distribute the draft to the full committee. The other members of the Committee endorsed this procedure.

The Chair informed the Committee that Judge Breese, Chair of the Plain Language Subcommittee (PLS), had requested that the MCJIC send the PLS additional materials to review. Accordingly, the Committee agreed that the MCJIC will send the following

materials to the PLS: (1) a memorandum detailing the most recent drafting protocols of the MCJIC, which the Reporter will prepare and circulate to the full MCJIC before forwarding it to the PLS; and (2) Chapter 3-4 (Sexual Offenses), which the Committee concluded was a good representative example because it contains numerous offenses, interrogatories, and special instructions. In addition, the Chair asked the Reporter to distribute to the full MCJIC the PLS's suggested revisions to Chapter 3-1 (Culpability) and Chapter 3-2 (Inchoate Offenses).

The Chair thanked Judge Tuttle for agreeing to stay on the Committee after she leaves the bench at the end of November.

IV. Subcommittee Presentations: Chapter 4-2 (Burglary) and Chapter 4-3 (Robbery)

The Committee completed its review of the subcommittee recommendations for Chapter 4-2 (Burglary) and Chapter 4-3 (Robbery). In the process of doing so, the Committee identified a few difficult drafting issues stemming from statutory ambiguities. The Committee agreed that, when confronted with such ambiguities, the best approach is to prepare model instructions that mirror the statutory language (without adding brackets, which would require the Committee to make decisions about legislative intent). However, the Committee further agreed that these ambiguities should be highlighted for users in the comments, with accompanying explanations that the Committee has not endeavored to resolve issues of statutory interpretation that have not yet been addressed in appellate opinions.

The Committee agreed to modify the directional language for all interrogatories to state that the foreperson should "mark" either "Yes" or "No" in the "appropriate place" (rather than specifying that the foreperson should place "an 'X' in the "appropriate bracketed space"). This change will make the interrogatories more versatile for users who elect to modify the format of the model special verdict form.

The Committee agreed to draft separate model instructions where a statute uses numbered or lettered subsections to define alternative ways of committing an offense.

The Committee agreed that, where a single statutory subsection defines more than one way to commit an offense, the alternatives will not be enclosed within brackets unless there is a disjunctive separation point that it is sufficiently obvious that it warrants identifying the alternatives with distinct numbering of the element(s).

V. Next Meeting

The next meeting will be held on Thursday, November 21, 2013, 3-5 p.m., in supreme court conference room #4244.

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 4:56 p.m.

Respectfully submitted,

Andrew Field, Reporter.