



MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE
Meeting Minutes of:
Thursday, November 21, 2013
3:00 – 5:00 p.m.
Held at the Supreme Court – 4th floor conference room #4244

Attendees:

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

Telephone participants:

Judge Burback, Judge Gilbert, Judge Greenacre, Judge Lammons, Judge Phillips, Judge K. Romeo, and Judge Tuttle.

Staff:

Andrew Field (Reporter).

I. Approval of Minutes

The Committee approved the minutes for the October 17, 2013, meeting.

II. Reporter's Update

The Reporter informed the Committee that he is continuing to update the chapter drafts with 2013 legislative changes and the most recent revisions to the drafting protocols, and he reminded the Committee that he will be renumbering the instructions in all of the chapters so that they have sequential whole numbers (thereby eliminating both the temporary numbering system that uses decimal point numeration, as well as the placeholder entries captioned as “reserved for future use”).

III. Roundtable discussion of issues related to valuation.

The Committee adopted a format that allows for multiple valuation questions to be submitted in a single interrogatory. The committee will use bracketed references to the valuation amounts where a statute includes more than two such amounts above the base level that are subject to determination by interrogatory, and will specify the amounts in the interrogatory, arranged in descending order, where a statute includes only two such amounts. The model instructions will include bracketed language explaining that: “Although you may answer ‘No’ to more than one question, you may

not answer 'Yes' to more than one question. Further, if you answer 'Yes' to any question, you should not answer the other question[s]."

The Committee agreed to maintain the numbered condition format it is utilizing for all other types of interrogatories where a statute includes only one valuation amount subject to determination by interrogatory (whether or not that valuation amount is coupled with one or more other conditions that address non-valuation issue(s)).

The Committee adopted the Chair's proposed elemental instructions for the aggregated theft offenses defined by sections 18-4-401(4)(a) and section 18-4-401(4)(b). Further, the Committee directed the Reporter to draft comments explaining the Committee's view that unanimity with respect to the means of commission is not required, either constitutionally or statutorily, and that the parties can move to strike any provisions from the instruction that are not supported by the evidence adduced at trial. Finally, the Committee directed the Reporter to prepare a similar instruction, and comment, for the aggregated defacing of property offense defined, with parallel language, by section 18-4-509(2)(a)(l)(B).

The Committee agreed to modify the format for all interrogatories to specify that jurors should "answer the following verdict question[s] *on the verdict form.*" (Emphasis added.)

The Committee agreed to modify drafting protocol 4 by eliminating the bracketed "[, and]" that now precedes the final bracketed element referring to disproof of the affirmative defense(s). The "and" will be moved and included as part of the bracketed final element: "and that the defendant's conduct was not legally authorized by the affirmative defense[s] in Instruction[s] ____." Further, the Reporter will add a comment to Chapter H (Defenses) explaining that that, when giving the bracketed element referring to disproof of the affirmative defense(s), users should replace the period at the end of the last unbracketed element with a comma.

The Committee agreed that, for the same reason that the Committee previously agreed to make an exception to drafting protocol 23 by incorporating the definitions of at-risk persons into the interrogatories (i.e., to avoid thrice repeating the shorthand description of the sentence enhancement factor that the jury is to determine), the Committee will broaden the scope of this exception and include other similar term definitions that can be incorporated into the interrogatories without disrupting the numbered condition format.

IV. Next Meeting

The next meeting will be held on Thursday, January 16, 2014, 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 4:46 p.m.

Respectfully submitted,

Andrew Field, Reporter.