



MODEL CRIMINAL JURY INSTRUCTIONS COMMITTEE
Meeting Minutes of:
Sunday, September 8, 2013, 3:00 – 5:00 p.m.
Vail Marriott Mountain Resort (Judicial Conference).

Attendees:

Justice Coats, Justice Rice (observing), Judge Dailey (Vice Chair), Judge Lichtenstein (Vice Chair), Judge Burback, Judge Egelhoff, Judge Gilbert, Judge Greenacre, Judge Lammons, Judge Lemon, Judge G. Nichols (observing), Judge Phillips, Judge Robison, Judge K. Romeo, Judge Tuttle, and Judge Warner.

Telephone participants:

Judge Samour.

Staff:

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

I. Approval of Minutes

The Committee approved the minutes for the August 15, 2013, meeting.

II. Reporter's Update

The Reporter showed the Committee a mock-up of a completed chapter to demonstrate how the use of hyperlinks will allow users to quickly jump to relevant instructions.

III. Planning for Project Completion

The Committee unanimously endorsed the Chair's proposal to accelerate the subcommittee review process with the goal of publishing the following materials in 2014: introductory, evidentiary, and concluding instructions; generally applicable affirmative defense instructions; instructions defining principles of culpability and inchoate offenses; insanity instructions; and a complete set of elemental, definitional, and offense-specific defense instructions for the most frequently charged crimes.

IV. Deferred Issues and Subcommittee Presentations

The Committee agreed that, rather than including language in the interrogatories (which will be identified for the jury as "verdict questions") indicating that the referenced terms or crimes are separately defined elsewhere in the instruction packet, the applicability of

such definitions should be made clear by (1) including introductory language in the model instruction for a consolidated list of term definitions (F:01) stating that such definitions govern where the terms appear in verdict questions; (2) preceding each offense referenced in a verdict question with the phrase “the crime of” so that jurors do not think they are at liberty to use non-statutory definitions (e.g., “the crime of assault”); and (3) modifying the comments that explain when to define uncharged offenses by including recommendations that such elemental instructions be placed “as close as practicable” to the instruction(s) that refer to the uncharged crime (e.g., § 18-3-302(3)(a), (b) C.R.S. 2013 (sentence enhancement for second kidnapping where the person kidnapped is the victim of a sexual offense or robbery)).

The Committee agreed to include the definitions of “at-risk adult” and “at-risk juvenile” as part of the model verdict questions that ask about the existence of a protected status.

The Committee agreed that the mens rea for each offense will be set off as a separate element and positioned so that it modifies all subsequent elements unless (1) there is appellate authority to the contrary; or (2) “an intent to limit its application clearly appears,” § 18-1-503(4), C.R.S. 2013. Further, the Committee agreed that, with respect to the latter consideration, a clear intent to limit the application of a mens rea should not be inferred merely because an offense is defined in such a way that the mens rea does not appear at the beginning of a statutory provision.

The Committee agreed to use bracketing sparingly for disjunctive items in a series. This decision will be explained in the introduction, with an accompanying acknowledgement that it may be appropriate to remove surplusage. At the next meeting, the Committee will resume its discussion of bracketing and develop drafting protocols that address this issue and the closely-related question of when to draft separate elemental instructions for offenses that can be committed in alternative ways.

V. Next Meeting

The next meeting will be held on Thursday, October 17, 2013, 3-5 p.m., in Colorado Supreme Court Conference Room #4242.

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 5:05 p.m.

Respectfully submitted,

Andrew Field, Reporter.