

Criminal Jury Instructions Committee

Minutes – March 16, 2018

Present in Person (9):

Hon. Sam Myers
Mikel Steinfeld
Steve McCarthy
Kenneth Vick
Antonio Zuniga
Carlos Carrion
Hon. Gerald Williams
Leonardo Ruiz
Bruce Chalk

Present Telephonically (8):

David Euchner
Brandon Brown
Joel Chorny
Robb Holmes

Elizabeth Bingert
Matthew Binford
Hon. Maria Brewer
Jennifer Linn

Absent (9):

Hon. James Beene
Hon. Douglas Camacho
Robert Gundacker
Paul Hawkins
Todd Lawson
Robert McWhirter
Victoria Otto
Hon. Alicia Skupin
Hon. John Lamb

1. Call to Order by The Honorable Sam Myers: 1:30PM

2. Agenda Items:

- a. Minutes of 11/3/17 meeting approved unanimously after Euchner makes two corrections to typos.
- b. Capital Jury Instruction 2.6 (Mitigation Assessment and the Sentence Burden of Proof)
 - i. Judge Myers addresses attorney Mike Shaw's written comments
 - ii. Discussion ensues re timeliness of comment. Judge Myers will let Mr. Shaw know how to submit a proposal.
 1. Zuniga comments re process for new proposals
 - iii. Attorney Patty Stevens of MCAO addresses the committee as a member of the public.
 1. Ms. Stevens proposes adding "...as well as the facts and circumstances of the offense" after the underlined portion in the third paragraph from the bottom of the jury instruction.
 - iv. Steinfeld proposes changing "offense" to "case."
 - v. Chalk moves, Zuniga second. No opposition. Instruction passes unanimously as modified.
 1. The revised portion now reads: "To do this, you must consider the quality and the strength, not simply the number, of aggravating and mitigating factors as well as the facts and circumstances of the case."
- c. Capital Jury Instruction 2.10 (Intellectual Disability)
 - i. Judge Myers discusses response from capital staff attorney
 - ii. Ms. Stevens comments as a member of the public.
 - iii. Euchner moves to reject comments by attorney Mike Shaw.
 1. Zuniga second – Proposal unanimously rejected.
- d. 23.08.02.A Making a Terrorist Threat
 - i. Euchner moves to insert mental state of knowingly
 - ii. Brandon Brown comments
 - iii. Vick comments
 - iv. Zuniga comments re statute
 - v. Hon. Williams discusses legislative history related to proposed stat. crim. 31.22 Unlawful use of electronic firearm tracking technology
 - vi. Discussion returns to 23.08.02.A. Zuniga moves to table jury instruction – no second
 - vii. Steinfeld proposal to omit "expressly" from use note and add citation to *Williams*.
 1. Steinfeld moves, Carrion second. Motion passes unanimously.
 - viii. Zuniga proposes adding comment that statute is poorly written – no second.

- ix. Euchner reurges motion to insert “knowingly” after “defendant” in first line. Zuniga second. Zuniga withdraws second. No vote.
 - e. Note – 2:20PM Bingert leaves telephonic.
 - f. 31.22 Unlawful use of electronic firearm tracking technology
 - i. Hon. Williams states that the statute was intended to be a strict liability offense.
 - ii. Euchner moves to strike whole instruction
 - iii. Chorny second – vote – Euchner and Chorny in favor. Everyone else nay. Instruction stays as written.
 - g. Discussion of proxy voting rule.
 - i. Euchner asks Judge Myers to see if State Bar board of governors (BOG) will allow proxies
 - ii. J. Myers agrees and is willing to write a letter to the BOG.
 - iii. Carrion moves to support Euchner’s proposal that proxies are permitted – Steinfeld second – Zuniga is sole nay. Motion passes.
 - h. Call to public occurs
 - i. 2:30PM adjourn.
- 3. Meeting Adjourns**