

Criminal Jury Instructions Committee

Minutes – September 28, 2018

Present in Person (15):

Hon. Sam Myers
Mikel Steinfeld
Steve McCarthy
Kenneth Vick
Antonio Zuniga
Carlos Carrion
Hon. Gerald Williams
Leonardo Ruiz
Bruce Chalk
Shawn Steinberg
Alice Jones
William Wallace
Michael Breeze
Todd Lawson
Hon. Julie Mata

Present Telephonically (6):

David Euchner
Robb Holmes
Hon. Maria Brewer
Jennifer Linn
Sarah Mayhew
Paul Hawkins

Absent (6):

Hon. James Beene
Hon. Danelle Liwski
Robert McWhirter
Hon. Alicia Skupin
Elizabeth Bingert
Hon. Jason Holmberg

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

- a. Committee member introductions
- b. Discussion re open meeting laws and email communication
- c. Discussion of format for meetings

2. Agenda Items:

- a. Minutes of 3/16/18 meeting approved unanimously.
 - i. Zuniga moves
 - ii. Chalk second
- b. Discussion of 2019 State Bar Convention
 - i. McCarthy will attend 10/2/18 chair meeting
- c. Capital Jury Instruction 2.3 – moved to later in meeting due to likelihood of discussion
- d. Standard Instruction 9- Flight or Concealment - Euchner
 - i. Lawson moves to reject
 - ii. Linn second
 - iii. Majority for rejecting
 - iv. Zuniga motion to separate 9(a) and (b) with new language
 - v. Linn and Euchner discussion
 - vi. Steinfeld moves to table – tabled to separate out language
- e. Standard Instruction 42 – Impasse - McCarthy
 - i. Zuniga moves
 - ii. McCarthy second – motion fails as written
 - iii. Judge Myers discussion re modification
 - iv. Judge Myers moves
 - v. Breeze second – motion passes unanimously as modified
- f. Standard Instruction 55 – Judge Myers
 - i. Euchner proposes comment re constitutional concerns below the line
 - ii. Euchner proposes striking word “facility”
 - iii. Zuniga moves to table
 - iv. Lawson draws attention to case that references statute
 - v. Judge Myers tables proposal
- g. Proposal to Renumber Standard Criminal Instructions - Euchner
 - i. Moved to bottom of order
- h. Statutory Criminal 28.10 - Bingert
 - i. Elizabeth Bingert proposal but she is not present – tabled
- i. Statutory Criminal 4.04 – Justification for Self-Defense - Euchner
 - i. Dan moves to adopt
 - ii. Zuniga second
 - iii. Proposal passes unanimously as written
- j. Statutory Criminal 4.07.04 – Judge Myers
 - i. Carrion proposes keeping it but adding comment
 - ii. Judge Myers will play with language and resubmit at next meeting

- iii. Ruiz provides a suggestion
- k. Statutory Criminal 4.12 - Euchner
 - i. Judge Myers proposes change and Euchner adds commas
 - ii. Zuniga moves to accept as modified
 - iii. Lawson proposes additional comment below the line
 - iv. Zuniga has no objection to Lawson's proposed comment
 - v. Zuniga moves to amend third paragraph
 - vi. Zuniga moves to adopt 4.12 as modified
 - vii. Motion to adopt as modified passes unanimously
- l. Break 3PM – Resume 3:15PM
- m. Statutory Criminal 12.02 - Lawson
 - i. Lawson proposal taken out of order as he needs to leave early
 - ii. Discussion moves to 23.01.D.04.01 as Lawson states it should be considered by the committee first
 - iii. Modifications made to 23.01.D.04.01 based on comments by Judge Myers and Steinfeld
 - iv. Lawson moves to table and asks for suggestions from the committee
 - v. Note: both 12.02 and 23.01.D.04.01 were tabled
 - vi. Note: Chalk left meeting and rejoined telephonically
- n. Statutory Criminal 7.03A - Euchner
 - i. Zuniga moves to accept
 - ii. Euchner second
 - iii. Accepted unanimously as written
 - iv. Note: 3:30pm Lawson leaves meeting and will rejoin telephonically
- o. Statutory Criminal 7.05 – Judge Myers and Alice Jones
 - i. The committee's discussion focuses on Judge Myers' proposal for 7.05
 - ii. Brackets added in paragraph 3
 - iii. Hon. Williams moves to adopt as modified
 - iv. Motion passes unanimously as modified
 - v. Note: 3:38pm Lawson rejoins telephonically
- p. Statutory Criminal 14.01.03 Sex Contact – Judge Myers and Alice Jones
 - i. Tabled
- q. Statutory Criminal 14.28 Sexual Extortion – Judge Myers and Alice Jones
 - i. Discussion – the committee prefers Jones' instruction
 - ii. Euchner proposes modifications to the instruction
 - iii. Breeze moves to adopt
 - iv. Jones seconds
 - v. Motion passes unanimously as modified
- r. Chapter 14 Cleanups – Judge Myers
 - i. Euchner proposes additional cleanup
 - ii. Euchner moves
 - iii. Steinfeld second

- iv. Motion passes unanimously as modified
- s. Capital Case 2.3 - McCarthy
 - i. Tabled
- t. Renumber Standard Criminal Instructions - Euchner
 - i. Steinberg volunteers to help Euchner renumber
- u. Statutory Criminal 23.10 – Judge Myers and Todd Lawson
 - i. Euchner proposes changes
 - ii. Euchner moves to approve as modified
 - iii. Jones second
 - iv. Motion passes unanimously as revised
- v. Statutory Criminal 31.129 – Judge Myers
 - i. Euchner proposes including *Williams* cite in the use note
 - ii. Breeze moves
 - iii. Carrion second
 - iv. Motion passes as revised (sole nay vote from Euchner)
- w. Statutory Criminal 31.0216 - Lawson
 - i. Tabled
- x. Statutory Criminal 34.0541 – Alice Jones
 - i. Judge Myers moves to approve as written
 - ii. Steinfeld second
 - iii. Motion passes unanimously as written
- y. Statutory Criminal 34.067(1) and 34.0771 - Jones
 - i. Judge Myers moves
 - ii. Carrion second
 - iii. Motion passes unanimously as written
- z. Statutory Criminal 36.28.11(a-h) AMMA card holders - Mayhew
 - i. Tabled
- aa. Statutory Criminal 37.30 Unlawful Patient Brokering – Judge Myers and Jones
 - i. Steinfeld moves to adopt Jones’ proposal as written
 - ii. Carrion second
 - iii. Motion passes unanimously as written
- bb. Call to public occurs
- cc. 4:30PM adjourn.

3. Meeting Adjourns