

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

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Report

TO: Members of the Judicial Council

FROM: Rules and Projects Committee
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SUBJECT: Jury Instructions: Approve New Procedure for RUPRO Review and
Approval of Changes in the Jury Instructions (Action Required)

Issue Statement

Many changes to the jury instructions—both the Judicial Council of California Civil Jury Instructions (CACI) and the council’s Criminal Jury Instructions (CALCRIM)—are minor and nonsubstantive. They include correcting typographical errors, making copyediting changes, and making changes to conform the language or style of particular instructions to other revised instructions that are similar. In addition, some are minor substantive changes unlikely to create controversy.

Authorizing the Rules and Projects Committee (RUPRO) to review and approve these changes to the jury instructions would allow the council more time to review significant, substantive changes to the jury instructions.

Recommendation

The Rules and Projects Committee recommends that the Judicial Council approve authority for RUPRO to:

1. Review and approve nonsubstantive technical changes and corrections and minor substantive changes unlikely to create controversy to Judicial Council of California Civil Jury Instructions (CACI) and Criminal Jury Instructions (CALCRIM); and
2. Delegate to the Advisory Committee on Civil Jury Instructions and the Advisory Committee on Criminal Jury Instructions the authority to review and approve

nonsubstantive grammatical and typographical corrections to the jury instructions and other similar changes deemed appropriate by RUPRO.

If the council approves these recommendations, RUPRO will periodically report to the council on the changes approved that are described in 1 and 2 above.

Rationale for Recommendation

The Task Force on Jury Instructions was appointed in 1997 on the recommendation of the Blue Ribbon Commission on Jury System Improvement. The mission of the task force was to draft comprehensive, legally accurate jury instructions that are readily understood by the average juror. The council approved CACI in July 2003 and CALCRIM in August 2005. After council approval of the new instructions, the council established the Advisory Committee on Civil Jury Instructions and the Advisory Committee on Criminal Jury Instructions to update, amend, and add to the instructions. (See Cal. Rules of Court, rules 6.58 and 6.59, attached.) CACI have been revised or updated six times since first approved. The most recent update to CACI was approved by the council at its June 30, 2006 meeting. The first update to CALCRIM was approved by the council at its August 25, 2006 meeting.

Currently, the advisory committees on jury instructions propose new and revised instructions for clarity or uniformity, based on changes in the law and comments and suggestions from judges, attorneys, staff, and advisory committee members. Substantive changes to the instructions are circulated for public comment. After circulation, the comments are considered by the advisory committees, revised based on comments, and considered by RUPRO to recommend for council approval for publication. In addition to substantive changes to the instructions, there are many minor, nonsubstantive changes that need to be made to the instructions and related materials. This type of change includes correcting grammatical and spelling errors, improving formatting, making conforming changes, and correcting citations. In the most recent revisions to the criminal jury instructions, for example, these minor changes included conforming changes and typographical and grammatical changes such as adding a space, deleting an extra bracket, correcting a point page reference, improving formatting, and correcting the spelling of a case cite. Often this type of correction is brought to the attention of advisory committee staff by the official publisher of the jury instructions, LexisNexis Matthew Bender, during the publisher's copyediting process. Sometimes because of the publishing schedule and the time frame for RUPRO and council meetings, these necessary minor corrections are not noted until after the council report on revised jury instructions has been submitted to RUPRO and the council.

RUPRO and the Executive and Planning Committee (E & P) have determined that the established procedures¹ for council review and approval of the rules of court are neither

¹ Rule-making procedures are governed by rule 6.22. (Attached for reference.)

practical nor helpful to the council when reviewing a varied work with the scope and length of the jury instructions. Under rule 6.13(d), RUPRO is authorized to establish a process for obtaining public comment on jury instructions and is charged with assisting “the council in making informed decisions about jury instructions by making recommendations to the council on whether to approve proposed new or modified instructions.”

The issue of further defining RUPRO’s authority for changes to jury instructions was discussed at the August 23 E & P meeting. The first set of proposed revisions to CALCRIM was on the agenda for the August 25, 2006, council meeting. Staff and the official publisher had found the need for very minor changes in 244 of the instructions after some of the instructions proposed for revision had circulated for public comment and been reviewed by the committee. The instructions with proposed changes filled two thick binders and included nonsubstantive grammatical and typographical corrections changes such as those described above on page 2. Members of both RUPRO and E & P observed that these changes did not rise to the level of significance that warranted council review. E & P asked RUPRO to consider how to categorize and allocate review authority for the jury instructions.

If RUPRO is authorized to review and approve nonsubstantive technical changes and corrections and minor substantive changes unlikely to create controversy, including conforming changes, and to delegate to the advisory committees authority to review and approve nonsubstantive grammatical and typographical corrections and other similar changes deemed appropriate by RUPRO, the council could focus on the significant, substantive changes and the jury instruction approval process will be facilitated and improved.

Alternative Actions Considered

The advisory committees on jury instructions are required under rules 6.58 and 6.59 to update, amend, and add topics to the jury instructions on a regular basis and to submit their recommendations to the council for approval. The advisory committees and RUPRO could continue to use the current process for obtaining council approval of changes to jury instructions. However, this would be time-consuming and involve the council in review of grammatical, typographical, and other minute changes. It could also result in a delay in publication of needed updates to the instructions. RUPRO therefore recommends that the process be streamlined, as outlined under the Recommendation section, so that the council can focus on significant changes to the jury instructions.

Rule 6.58 Advisory Committee on Civil Jury Instructions

- (a) **[Area of focus]** The Advisory Committee on Civil Jury Instructions regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's civil jury instructions.
- (b) **[Membership]** The committee must include at least one member from each of the following categories, and a majority of the members must be judges:
 - (1) Appellate court justice;
 - (2) Trial court judge;
 - (3) Lawyer whose primary area of practice is civil law; and
 - (4) Law professor whose primary area of expertise is civil law.

Rule 6.58 adopted effective September 1, 2003.

Rule 6.59 Advisory Committee on Criminal Jury Instructions

- (a) **[Area of focus]** The committee regularly reviews case law and statutes affecting jury instructions and makes recommendations to the Judicial Council for updating, amending, and adding topics to the council's criminal jury instructions.
- (b) **[Membership]** The committee must include at least one member from each of the following categories, and a majority of the members must be judges:
 - (1) Appellate court justice;
 - (2) Trial court judge;
 - (3) Lawyer whose primary area of practice is criminal defense;
 - (4) Deputy district attorney or other attorney who represents the People of the State of California in criminal matters; and
 - (5) Law professor whose primary area of expertise is criminal law.

Rule 6.59 adopted effective July 1, 2005.

Rule 6.22. Rule-making procedures

- (a) **[Who may make proposals]** A Judicial Council internal committee, advisory committee, or task force, or the Administrative Office of the Courts may recommend that the council adopt, amend, or repeal a rule or standard or adopt, approve, revise, or revoke a form.
- (b) **[Legal and advisory committee review]** The internal committee, advisory committee, task force, or Administrative Office of the Courts (“the proponent”) must first submit its proposal to the Office of the General Counsel for legal and drafting review. If the proponent is not an advisory committee, and an appropriate advisory committee exists, the proponent must also submit the proposal to that advisory committee for review.
- (c) **[Recommendation to Rules and Projects Committee]** After the proposal has been reviewed by the Office of the General Counsel and any appropriate advisory committee, the proponent must submit the proposal to the Rules and Projects Committee with a recommendation that it be (1) circulated for public comment or (2) submitted to the council for approval without public comment.
- (d) **[Review by Rules and Projects Committee]** The Rules and Projects Committee must review the recommendation and may take one of the following actions:
 - (1) Circulate the proposal for public comment;
 - (2) If the proposal presents a nonsubstantive technical change or correction or a minor substantive change that is unlikely to create controversy, recommend that the council adopt it without circulating it for comment;
 - (3) Postpone circulation for comment and either (A) request further information or analysis by the proponent or (B) refer the matter to another council internal or advisory committee, the full council, or the Chief Justice; or
 - (4) Reject the proposal if it is contrary to statute, conflicts with other rules or standards, or is contrary to established council policy.
- (e) **[Review of comments]** After a proposal is circulated, the proponent must review the comments and decide whether to reject the proposal or to recommend that the council adopt it, with or without modifications.

- (f) **[Submission to council]** If, after reviewing the comments, the proponent recommends that the council adopt the proposal, the matter will be placed on the council's agenda. The Rules and Projects Committee must review the recommendation and submit its own recommendation to the council. The council may adopt, modify, or reject the proposal.

- (g) **[Compelling circumstances]** The procedures established in this rule must be followed unless the Rules and Projects Committee finds that compelling circumstances necessitate a different procedure. The committee's finding and a summary of the procedure used must be presented to the council with any recommendation to the council made under this subdivision.

Rule 6.22 adopted effective January 1, 2002.