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April 7, 2021

VIA EMAIL

The Honorable John C. Hoffman
Minnesota District Judges Association
25 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Jeff Shorba
Minnesota State Court Administrator
25 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55115

Re: Copyrightability of Minnesota Jury Instruction Guides

Dear Judge Hoffman and Mr. Shorba:

My name is Tony Webster, a journalist and researcher in Minneapolis. I frequently follow court cases and use court records in my work. I'm not an attorney, so when I first saw the word CRIMJIG in a state court filing many years ago, I had no idea what it meant and an online search wasn't particularly helpful. I of course refer to model jury instructions—the Minnesota Jury Instruction Guides: Criminal ("CRIMJIG") and its civil court counterpart, the Minnesota Jury Instruction Guides: Civil ("CIVJIG")—hereafter individually and collectively "JIGs."

Through this correspondence, I respectfully hope to convince the Minnesota District Judges Association and anyone else who claims or could claim copyright in the JIGs that they are government edicts not eligible for copyright protection and thus in the public domain. I further hope that the Minnesota District Judges Association or Minnesota Judicial Branch will work to provide free and open access to the JIGs by publishing them online in an arrangement similar to state statutes or court rules, without any requirement for the creation of an account, submission of payment, or the agreement to any terms or conditions.

I. Limitations on the public's access to Minnesota's Jury Instruction Guides impedes access to justice, legal education, and journalism

As an initial matter, it is important to recognize the significance of the JIGs. When turning a case over to a jury, Minnesota courts provide instructions to the jurors. Throughout Minnesota, district courts use the language supplied in the JIGs to instruct the jurors on their duties, the presumption of innocence, evidence rules, the elements of specific alleged crimes, and defenses. For example, CRIMJIG 3.03 involves a judge reading to the jury:

"Proof beyond a reasonable doubt is such proof as ordinarily prudent men and women would act upon in their most important affairs. A reasonable doubt is a doubt based upon reason and common sense. It does not mean a fanciful or capricious doubt, nor does it mean beyond all possibility of doubt."

Though jury instructions can be modified from the JIGs, the JIGs serve as the baseline and Minnesota judges expect counsel and parties to use them. Juries render their verdict based on the law as they understand it from the jury instructions. In these ways, JIGs are used much as court rules and the law itself is used.

Attorneys, prosecutors, litigants, and defendants all need to be able to access and use the JIGs to ensure they can represent their own or their clients' interests, and to receive a fair trial. The general public—especially law students, researchers, and the press—also need access to the JIGs to better understand how the Judicial Branch operates, and how court proceedings work. As the nation's focus is on a Minnesota courtroom during the trial of former Minneapolis police officer Derek Chauvin, there is unprecedented public interest in the mechanics of the judiciary and there will be great interest in understanding the jury's ultimate decision.

But for far too many Minnesotans, the JIGs are off-limits. The JIGs are only advertised as being available for purchase by paying Thomson Reuters \$600 for the CRIMJIGs plus \$762 for the CIVJIGs as a one-time fee, or \$28 per month plus \$36 per month, respectively, on a monthly contract with a minimum term length. *See Exhibit A* (copies of Thomson Reuters Store website). The pricing is the same for a hard copy physical book or eBook, though the eBook is subject to the purchaser's agreement to terms and conditions, including onerous use restrictions and the potential that access may be revoked. *See Exhibit B* (Thomson Reuters eBook License Agreement). Additionally, the subscription pricing arrangement imposes two to ten-year minimum terms with predefined price increases, and use restrictions. *See Exhibit C* (Thomson Reuters subscription terms).

The JIGs are available at many law libraries in book format, but this generally requires an in-person visit. Many law libraries are currently closed or have extremely limited access during the COVID-19 pandemic.¹ But even during more normal times, many Minnesotans lack access to transportation or cannot visit a law library during daytime business hours due to work or family obligations. In rural areas, Minnesotans may have to drive an hour or more to reach a law library. Additionally, I know from personal experience that some law libraries only loan books to licensed attorneys, or impose burdensome cash-deposit requirements.

The JIGs are also available through Westlaw, but it has a big price tag. Westlaw Classic is advertised as \$89 per month for a single person with a three-year subscription term, but at that level there's apparently no access to the *Minnesota Practice Series* containing the JIGs. *See Exhibit D* (Westlaw pricing as of April 6, 2021). One may have to pay \$292 per month on a one-year agreement or \$248 per month on a three-year agreement, and the agreement includes price increases in the second and third year. *Id.*

¹ As of April 7, 2021, the Hennepin County Law Library is closed; the Minnesota State Law Library website states that "in-person appointments may be available on a very limited basis"; the Warren E. Burger Library at the Mitchell Hamline School of Law website states their law library is closed to public access at this time and is only open to students, staff, and faculty; and the St. Louis County, Minn. website states that all three law libraries in that county are closed.

Westlaw is generally available at law libraries. But in-person visits remain inaccessible for many Minnesotans for the reasons already stated. The Hennepin County Law Library is currently offering a 14-day remote-access trial to Westlaw during the pandemic, which does include access to the JIGs. But this is certainly quite limited in duration, contains use restrictions, and is not a substitute for open access. It should also be noted that accessing the Minnesota JIGs through this 14-day trial Westlaw arrangement requires Minnesotans to enter into a contractual agreement with Thomson Reuters, and Minnesotans must also irrevocably submit to the exclusive jurisdiction of the courts in New York in their attempt to read Minnesota's model jury instructions. *See Exhibit E* (Thomson Reuters general terms and conditions).

None of this should be. These access limitations and shocking costs place the JIGs out of reach for low-income Minnesotans, solo practitioners, law students, *pro se* parties, and the working press during a time of job cuts and funding shortages at news organizations.

The JIGs should be online and freely accessible, just as court rules and state statutes are, to promote the Court's interest in advancing fairness and justice. But the Minnesota District Judges Association ("MDJA"), Thomson Reuters, and/or West Publishing has registered current and previous JIGs with the U.S. Copyright Office and placed a copyright notice within the book which contains a printed copy of them, and on Westlaw ("© 2021 Thomson Reuters"), limiting distribution in ways inconsistent with how authoritative and frequently used the JIGs are.

II. "No one can own the law" is the law

Since the 19th century, "non-binding, explanatory legal materials are not copyrightable when created by judges who possess the authority to make and interpret the law." *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. ____ (2020); 140 S. Ct. 1498 (citing *Banks v. Manchester*, 128 U.S. 244 (1888)). The *Georgia* decision recently expanded the government edicts doctrine, but as the opinion illustrates, it's not a new concept.

The Supreme Court's very first copyright case, *Wheaton v. Peters*, 33 U.S. 591 (1834), arose when the Court's reporter² of decisions sued his successor, arguing that the justices had essentially gifted their Supreme Court decisions to him, along with ownership interests. "The Court unanimously rejected that argument, concluding that 'no reporter has or can have any copyright in the written opinions delivered by this court' and that 'the judges thereof cannot confer on any reporter any such right.'" *Georgia* at 1506 (internal citations removed).

The issue was revisited in the 1888 *Banks* decision, the Supreme Court concluding in favor of the public interest:

"The question is one of public policy, and there has always been a judicial consensus, from the time of the decision in the case

² The word "reporter" as used in this correspondence refers to the legal use of the word, *i.e.* case law reporters or persons officially authorized to publish opinions, not the journalistic sense of the word.

of *Wheaton v. Peters*, 8 Pet. 591, that no copyright could under the statutes passed by Congress, be secured in the products of the labor done by judicial officers in the discharge of their judicial duties. The whole work done by the judges constitutes the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute.”

Banks at 253.

Specifically, the Supreme Court held that judges may have “no pecuniary interest or proprietorship, as against the public at large, in the fruits of their judicial labors.” *Id.* “This extends to whatever work they perform in their capacity as judges, and as well to the statements of cases and head notes prepared by them as such, as to the opinions and decisions themselves.” *Id.*

In the *Georgia* case, the nonprofit organization Public.Resource.Org posted a copy of the Official Code of Georgia Annotated (“OCGA”) online, and the State of Georgia sued for copyright infringement, focusing their efforts on the annotations. The district court initially ruled in favor of the State, finding that “[o]nly those government documents having the force of law are uncopyrightable.” *Code Revision Comm'n v. Public.Resource.Org, Inc.*, 244 F. Supp. 3d 1350, 1356 (N.D. Ga. 2017). But the 11th Circuit, in “confronting profound and difficult issues about the nature of law in our society and the rights of citizens to have unfettered access to the legal edicts that govern their lives,” reversed in a holding that the entirety of the OCGA—including annotations—is in the public domain. *Code Revision Comm'n ex rel. Gen. Assembly of Ga. v. Public.Resource.Org, Inc.*, 906 F.3d 1229, 1232 (11th Cir. 2018).

As the 11th Circuit pointed out, the law cannot be copyrighted, but the annotations by a private party—the original work of a private publisher—could be. But, “the annotations in the OCGA are not exactly like either of these two types of works. Rather, they fall somewhere in between—their legal effect and ultimate authorship more indeterminate.” *Id.* In that case, the annotations were prepared by a private entity under the corporate umbrella of the LexisNexis Group in an agreement with the State, and then Lexis was given the exclusive right of publication, but it was adopted by the government. Ultimately, the 11th Circuit identified three factors—“the identity of the public officials who created the work, the authoritativeness of the work, and the process by which the work was created”—in reaching their decision that the OCGA’s annotations were in the public domain. *Id.* (emphasis in original).

The Supreme Court granted certiorari and then affirmed last year: “If judges, acting as judges, cannot be ‘authors’ because of their authority to make and interpret the law, it follows that legislators, acting as legislators, cannot be either.” *Georgia* at 1507. But the Court cast an even wider net than the 11th Circuit’s identity-authoritativeness-process rule, noting that the

Court's precedent "reveals a straightforward rule based on the identity of the author ... regardless of whether a given material carries the force of law." *Id.* at 1506.

"Rather than attempting to catalog the materials that constitute 'the law,' the [government edicts] doctrine bars the officials responsible for creating the law from being considered the author[s] of whatever work they perform in their capacity as lawmakers. Because these officials are generally empowered to make and interpret law, their whole work is deemed part of the authentic exposition and interpretation of the law and must be free for publication to all."

Id. at 1507 (cleaned up).

The rule is now thus quite simple: "copyright does not vest in works that are (1) created by judges and legislators (2) in the course of their judicial and legislative duties." *Id.* at 1508. The U.S. Supreme Court was right when it said "no one can own the law." *Id.*

III. A strong fact pattern powerfully demonstrates that Minnesota's jury instruction guides are not subject to copyright protection

When nearly all district court judges are members of an organization which authored the JIGs, and then those very judges use the JIGs in the courtroom to instruct juries on the law and establish from the bench an expectation that the parties and counsel before them also use the JIGs, those JIGs are (1) created in the course of their judicial duties; (2) authentic expositions and interpretations of law; and (3) edicts of government. They are not copyrightable.

(a) The JIGs were authored by state court judges

Whether starting with rule described in *Banks or Georgia*, the first question is whether the JIGs were created by judges, and the answer is yes. "The CRIMJIGS are published by a committee of the Minnesota District Judges Association." *State v. Peterson*, 673 N.W.2d 482, 484 n.1 (Minn. 2004). The authorship as identified on the U.S. Copyright Office application for the most recent version of the CRIMJIGs and in the title pages of the physical book is the "Minnesota District Judges Association Committee on Criminal Jury Instruction Guides."

The Minnesota District Judges Association ("MDJA") is the "professional association of Minnesota judges" and counts "virtually all of the district court judges, many court of appeals judges, and a couple of supreme court justices" as members. See Testimony of Hon. Teresa Warner, House Judiciary Finance and Civil Law Division (Jan. 23, 2019), 5:24–5:42, available at <<https://www.house.leg.state.mn.us/hjvid/91/890852>>. In the most recent version of the CRIMJIGs which I could locate in a format with a title page, the MDJA's Committee on Criminal Jury Instruction Guides consisted of 26 Minnesota state court judges and a reporter who I understand was at the time a Judicial Branch employee.

(b) The JIGs are an “authentic exposition and interpretation of the law”

There is substantial evidence that JIGs have the effect of law—because they *are* the law. As mentioned *supra*, when work done by judges is a “authentic exposition and interpretation of the law” it is “binding [for] every citizen” and thus must be “free for publication to all, whether it is a declaration of unwritten law, or an interpretation.” *Banks* at 253.

The JIGs are accurate statements of law, relied on as such by Minnesota courts. The JIGs self-declare such authenticity, as seen on the copyright page to the 2018–2019 Pocket Part of the CRIMJIGs: “This publication was created to provide you with accurate and authoritative information...” And the Minnesota Supreme Court has confirmed precisely that. *See State v. Goodloe*, 718 N.W.2d 413, 421 (Minn. 2006) (finding a CRIMJIG “continues to accurately state the law,” “tracks almost word-for-word the statutory definition,” and “correctly summarize[s]” case law).

But moreover, as JIGs are used in the courtroom, they stand in for the law. When the Court reads CRIMJIG 3.01 to the jury, the Court is advising the jurors they’re about to hear the “rules of law”—no doubt sourced from other CRIMJIGs—and that they “must follow and apply” those rules. The jury then hears the definitions and elements of crimes not by reading and interpreting the language of the statute themselves, but by having it read to them from interpretation expressed in CRIMJIGs. When a jury follows and applies rules of laws sourced from pattern jury instructions, the pattern jury instructions are the law.

(c) Minnesota courts expect use of pattern jury instructions

It is clear through the ways in which the JIGs are used and discussed that Minnesota courts have set an expectation that judges adopt and conform to the JIGs, the Minnesota Supreme Court stating as much: “...we believe that the trial court should not depart from the wording of the statute — *i.e.*, should follow the recommended CRIMJIG language...” *State v. Thunberg*, 492 N.W.2d 534, 537 (Minn. 1992).

Indeed, many practice pointers and preferences documents express judicial requirements for the baseline use of the CRIMJIGs and identification of CRIMJIG numbers in submitted documents, or that when counsel deviates from the CRIMJIGs, they must allow the Court extra time for review and provide legal support to justify each deviation from the JIGs. *See, e.g., Exhibit F* (The Honorable Judge Bev Benson’s Practice Pointers and Preferences, Fourth Judicial District, rev. Sep. 2017), and *Exhibit G* (The Honorable Judge Judge Juan Hoyos’ Practice Pointers and Preferences, Fourth Judicial District, rev. Sep. 2017), both highlighted.

In a guidebook the Court prepared for *pro se* defendants, the use of JIGs is expressed as being mandatory: “The final jury instructions will be drafted using the Minnesota Criminal Jury Instruction Guides (‘CrimJIGs’) as a guide.” *See Self-Represented Criminal Jury Trial Guidelines*, 10TH JUDICIAL DISTRICT, rev. Mar. 2020, available at <<https://mncourts.gov/>>

mncourtsgov/media/tenth_district/SHC%20Documents/Self-Represented-Criminal-Jury-Trial-Guidelines.pdf (emphasis added).

(d) Minnesota courts have adopted JIGs as government edicts

The authoritative nature of the JIGs is confirmed by how Minnesota judges invoke them, the state supreme court describing the CRIMJIGs as “the standard Minnesota jury instructions,” *State v. Kvale*, 302 N.W.2d 650 (Minn. 1981) (emphasis added), and attributing them not to a private corporation like MDJA or Thomson Reuters, but rather to the people: “Minnesota has ... a general self-defense jury instruction ... CRIMJIG 7.05.” *State v. Herrera-Torres*, A18-1341, at *6 (Minn. Ct. App. Jan. 11, 2021) (emphasis added). The comments to the Minnesota Judicial Branch’s court rules also reference JIGs. *See, e.g.*, Minn. R. Civ. P. 26.04 (“For a sample form for that purpose see CRIMJIG...”).

The Supreme Court has “recognize[d] the important role that the CRIMJIGS have in criminal jury trials, occasionally evaluating the language of the CRIMJIGS and recommending review by the Minnesota District Judges Association Committee on Criminal Jury Instruction Guides.” *Peterson* at 484. *See also State v. Ihle*, 640 N.W.2d 910, 917 n.5 (Minn. 2002) (recommending changes to CRIMJIG), *State v. Johnson*, 310 N.W.2d 96, 97 (Minn. 1981) (approving CRIMJIGs), *State v. Sanders*, 376 N.W.2d 196, 202 (Minn. 1985) (expressing a preference that additional language not be added to self-defense CRIMJIG), *State v. Campbell*, No. A09-902, at *2 (Minn. Ct. App. Apr. 27, 2010) (approving of self-defense CRIMJIG).

Minnesota judges look to the JIGs for legal support. *See, e.g., State v. Kjeldahl*, 278 N.W.2d 58, 62 n.9 (Minn. 1979) (“Support for our reading of the statute is found in ... Crim.Jig.”) What’s more, the appellate court has cited to the JIGs and JIG use notes as a primary source instead of any statute or rule. *See, e.g., Fick v. Edwardson*, A17-1388, at *6-7 (Minn. Ct. App. Apr. 16, 2018) (“Past damages for health-care expenses include medical supplies, hospitalization, and health-care services of every kind necessary for treatment up to the time of the verdict. 4A *Minnesota Practice*, CIVJIG 91.15 (2014).”), *State v. Milek*, A13-0665, at *5 (Minn. Ct. App. Dec. 30, 2013) (“In a civil case, the [cost of repair or the difference in value before and after the accident] election is made by the evidence introduced by the claimant. 4A *Minnesota Practice*, CIVJIG 92.10 use note (2006).”)

In addition to the obvious use of jury instruction guides in instructing juries, judges also use and apply the CRIMJIGs when making probable cause determinations and in conducting bench trials, relying on the definitions and elements of crimes as they appear in the CRIMJIGs. *See, e.g., State v. Glover*, Case No. 27-CR-19-16529, Doc. No. 27 at 9 (Hennepin Co. Dist. Ct., Oct. 15, 2019) (probable cause analysis based on and citing to CRIMJIGs), *State v. Sagvold*, Case No. 14-CR-18-840, Doc. No. 139 at 21–24 (Clay Co. Dist. Ct., Mar. 21, 2019) (bench trial conclusions of law based on and citing to CRIMJIGs).

When a court impermissibly alters a CRIMJIG, the Court of Appeals described it as amounting to “legislating from the bench,” *State v. Green*, 538 N.W.2d 698, 703 (Minn. Ct. App. 1995) (describing *Thunberg*), strongly suggesting that the Court sees the JIGs much like the law itself. And even more persuasively, when a trial court departs from the language of the CRIMJIGs, it can amount to a prejudicial error. *Green* at 705 (“On these facts the trial court erred in departing from the language of CRIMJIG 11.14. The error was prejudicial.”)

There’s a longstanding assumption that the JIGs are the touchstone of jury trials, such as when the Minnesota Court of Appeals shifted the burden onto a defendant to show the JIGs are wrong. *See State v. Ineh*, A20-0005, at *14 (Minn. Ct. App. Jan. 19, 2021) (“Nor does he cite to any authority suggesting that the language from the Jury Instructions Guides is in anyway misleading or confusing … because the district court instructed the jury on the entrapment defense according to the Jury Instruction Guides and there is no authority to suggest that doing so was clearly erroneous, we conclude that Ineh has not demonstrated plain error with regard to the jury instructions. Therefore, Ineh has not demonstrated that reversal of his convictions is required.”)

As Judge Warner explained to the Minnesota Legislature:

“Lawyers know what the jury instruction guides are. When you try a case in the state of Minnesota, either in civil or criminal, you use jury instruction guides that are consistent throughout the state. They’re modified or tweaked for the individual type of case, but the guides are consistent. I mean, it makes sense that they’re consistent throughout the state. So if you’re trying a case in Anoka or Ramsey or Beltrami or Rock county, your jury instructions are the same. So our citizens are getting the same interpretation and application of the law. Those committees are Minnesota District Judges’ committees that put together those books … when I try a case, the first thing I do is go to the jury instruction guides, because it’s the district judges’ responsibility.”

Testimony of Hon. Teresa Warner at 7:48–9:15.

(e) The U.S. Copyright Office refuses to register government edicts

The MDJA or anyone else claiming copyright over the JIGs does not comport with the Compendium of U.S. Copyright Office Practices, which provides that the Office will not register government edicts. *See Compendium*, 3d ed., § 313.6(C)(2) (updated Jan. 28, 2021). Though the Office will register annotations or explanatory materials, they will only do so if the author “lack[s] the authority to make or interpret the law,” consistent with last year’s *Georgia* opinion that “non-binding, explanatory legal materials are not copyrightable when created by judges who possess the authority to make and interpret the law.”

Documents written by those who make or interpret the law, used in the making and interpretation of the law, are government edicts. Any copyright registration for the text of the JIGs is invalid or, in the alternative, the text of the JIGs must be excluded from any copyright registration or assertion of copyright.

I did notice in reviewing the MDJA's over 60 copyright registrations that a recent registration included a limitation of claim stating that the “[r]egistration does not extend to government edicts that have been issued by any state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials that have the force of law.” However, this was prior to the *Georgia* decision and thus does not track the updated Compendium § 313.6(C)(2), providing no clarity about the copyright status of the text of the JIGs.

IV. Other states have embraced public, open access to model jury instructions

Many states have their model jury instructions online with free access, and without the requirement for registration or any agreement to terms. North Dakota's are hosted through Fastcase, but doesn't require registration, payment, or have any clickwrap agreements. *See <<https://www.ndcourts.gov/legal-self-help/pattern-jury>>*. Massachusetts' model jury instructions are also freely available online. Though a copyright notice appears, so is a statement welcoming reproduction as long as the source and any changes are identified. *See <<https://www.mass.gov/lists/criminal-model-jury-instructions-for-use-in-the-district-court>>*. Florida has no copyright notice and invitingly states: “The instructions are provided for your use.” *See <<https://www.floridabar.org/rules/florida-standard-jury-instructions>>*.

California's Judicial Council continues to assert copyright over their jury instructions, which is being actively challenged by a large coalition of civil liberties groups, public defenders, law professors and librarians, and law student organizations. However, they have granted a nonexclusive, noncommercial license to the public and have placed PDFs online. *See <<https://www.courts.ca.gov/partners/juryinstructions.htm>>*. Washington state reached an agreement with Thomson/West, and now has pattern instructions online through a Westlaw link with no registration, payment requirement, or clickwrap agreement. *See <<https://www.courts.wa.gov/index.cfm?fa=home.contentDisplay&location=PatternJuryInstructions>>*.

And in Wisconsin, where jury instructions were copyrighted by the University of Wisconsin system, Public.Resource.Org and the state criminal defense bar made a public domain argument much like the one I make to you today, and Wisconsin's model jury instructions are now all online, in both Word and PDF format, with indices and comments. *See Wisconsin Association of Criminal Defense Lawyers, *Jury Instructions Now Free Due to Efforts of WACDL and Public.Resource.Org, Inc.* (Jan. 28, 2021), available at <<https://www.wacdl.com/blog/jury-instructions-now-free-due-efforts-wacdl-and-publicresourceorg-inc>>*.

Minnesota should follow the good work of these other states.

V. The MDJA, Court, and Thomson Reuters/West Publishing should waive copyright to jury instruction guides, confirming the law belongs to the people

Given the apparent assertion of copyright over Minnesota's pattern jury instructions, I respectfully ask the following questions of the Minnesota District Judges Association, Minnesota District Judges Foundation, Minnesota Judicial Branch, West Publishing, Thomson Reuters, and anyone else who may claim to have rights in the JIGs, both current and prior versions:

- (1) Do you assert the text of CIVJIGs and CRIMJIGs are copyrighted material?
- (2) Which persons or entities can claim any intellectual property right over the text of the CIVJIGs and CRIMJIGs?
- (3) If anyone claims a copyright covers a broader work than just the text of the CIVJIGs and CRIMJIGs, what are the specific protectable elements in which you are and are not asserting copyright?
- (4) If a member of the public desires to post a copy of the text of the JIGs and use notes or comments thereto online in a noncommercial manner and without charging money or imposing conditions on access, do you maintain that such an action would violate any rights or laws?

Of course, nothing I've said here is meant to belittle what I have no doubt is a monumental effort to create and update the JIGs; it is because the JIGs are so important and authoritative that I raise this issue with you. I am hopeful you will agree the JIGs are in the public domain that no one would be subject to a claim for damages, costs, or attorney's fees under the Copyright Act or any other cause of action in copying them or making them available for free to the public, as a public service.

I also hope that you will agree that if the Minnesota Judicial Branch or Minnesota District Judges Association authoritatively published the JIGs online for free and open access, it would greatly advance the public interest, promote legal education and serve the legal community well, and prove beneficial for Minnesotans most at risk for lacking access to justice. If there's anything I can do to help make that happen, please let me know.

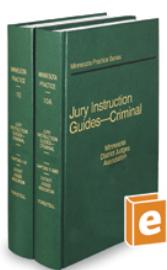
I hope to hear from you soon, and I deeply appreciate your time and attention.

Respectfully,

/s/ *Tony Webster*

Enclosures

cc: All potential copyright claimants including Thomson Reuters Global Resources; West, a Thomson Reuters Business; West Publishing Corporation; Copyright Clearance Center



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MN District Judges Assoc.-Committee on Jury Instruction Guides - Criminal

Product details:

Brand: Thomson West

Copyright: 2015-2020

ISBN: 9781731963000

Publication Frequency: Updated as changes in the law dictate

Update format: N/A

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Copyright: 2015-2020

ISBN: 9781731963000

Publication Frequency: Updated
as changes in the law dictate

Update format: N/A

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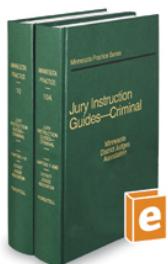
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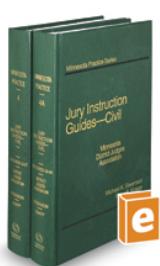


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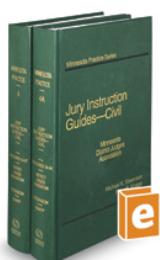
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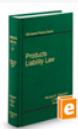
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(b) **Amendments.** We may amend the license from time to time including access restrictions and usage limitations.

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We are not liable for any damages or failure to perform our obligations under the Agreement because of circumstances beyond our reasonable control. If those circumstances cause material deficiencies in the products or services and continue for more than 30 days, either of us may terminate any affected product or service on notice to the other.

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**THE HONORABLE JUDGE BEV BENSON
FOURTH JUDICIAL DISTRICT
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- All communication, whether scheduling, logistics, or substantive be sent to staff at 4thJudgeBensonStaff@courts.state.mn.us.
- All communication via e-mail must have opposing party copied on the e-mail.
- In special situations, Judge Benson may allow telephone conferences in accordance with the rules.

II. Motion Practice

- When possible, Judge Benson prefers briefings be submitted with motions.
- Counsel should e-mail staff as soon as possible in advance of a hearing to inform the Court that a contested motion is resolved or partially resolved. Counsel should ensure that all parties are included in the e-mail.
- Anyone requesting a continuance or change in scheduling should first contact opposing party. E-mail communication with staff and opposing party is preferred. A request for a continuance should include a basis for the request and if opposing counsel does not oppose the request, please select a new date and time within the next 30 days, if at all possible, which works for all parties and provide that date to the Court, so we can reschedule. It is helpful to include a few proposed dates, because if no dates are proposed, this triggers another series of emails.
- Any stipulations or proposed orders should be submitted by e-mail to staff and ensure that all parties are included in the e-mail.

III. Written Submissions-Briefing

- All written submissions must be e-filed by the end of business on the due date.
- Judge Benson prefers to receive the briefs along with the motion before oral arguments.
- Courtesy copies should be sent to staff by e-mail. Counsel should ensure that all parties are included in the e-mail.

- Counsel should submit copies of case authority along with their written submissions when the case authority is unpublished. Counsel should ensure that all parties are included in the e-mail.
- In cases of plea by mail, it is preferred that defense counsel bring the plea to the hearing or email to 4thJudgeBensonStaff@courts.state.mn.us and e-file. The plea should include a signature by the defendant and defense counsel, as well as verification by the prosecutor, which may include an attached email from the prosecutor with the offer if the offer has not already been noted in MNCIS.

IV. In-Court Proceedings

- Judge Benson prefers that counsel arrive 15 minutes before any hearing.
- Notice for a waiver of appearance should be done in writing. Felony and Gross Misdemeanor waivers should be done on the record at the preceding hearing.
- Judge Benson prefers that counsel stand at the podium or at counsel table, whichever counsel prefers, while on the record.
- Oral arguments do not need to recap the material from written submissions. Oral arguments should be focused on the most important points of the issue.
- If additional case law is presented at oral argument, a hard copy of that case should be provided to the court and opposing party.
- Judge Benson strongly encourages the use of technology in the courtroom. Advance training in the technology being used is encouraged, and counsel may bring assistance to assist with operating the technology.

V. Pretrial Procedures

- Judge Benson does not have standing orders in regards to pretrial procedures. She prefers to address the procedures for each case individually based on the aspects of each case.
- *Voir dire* should not be used to argue the law or theories of the case. *Voir dire* should not be used to get personal information such as home addresses or phone numbers.
- Jury instructions, special verdict forms, and witness lists should be filed together with other pretrial motions.

- The jury instructions should be listed according to the CRIMJIG number. Special jury instructions that differ from the CRIMJIGs should be written and submitted at the same time, along with support for the use of the special jury instruction.
- Witness lists must be submitted at least 7 days in advance of the trial, absent “good cause.”
- Motions *in limine* are open to all potential issues. The motions will normally be argued on the first day before trial.
- At the hearing prior to trial, Judge Benson likes to have the opportunity to discuss the status of the case and trial procedures with counsel. Judge Benson likes to know if a settlement offer has been extended. If so, Judge Benson requires that the parties place the offer(s) on the record and opposing counsel inquires of his/her client about the offer(s) and whether the client wishes to accept the offer or reject the offer. Additionally, Judge Benson likes to know what other motions or issues remain to be discussed before trial, the number of witnesses, and expected exhibits. Judge Benson also likes to use this time to confirm the jury instructions and review the jury selection process.

VI. Trial

- Parties are asked to be at court by 8:45 am on the day of trial. Trial days are generally scheduled to start at 9:00 a.m. with one 20 minute break about 10:30 a.m. Normally, there will be a break at noon for lunch depending on the status of testimony. Trial will continue until 4:30 pm, but it may be extended to 5:00 p.m. if need be and there are no conflicts from the parties or the jurors.
- In the case of objections, counsel should stand and state the basis for the objection. Counsel may request to approach the bench if they wish to argue the objection; however, argument should be rare and is discouraged.
- Counsel should remain at their table when examining witnesses.
- Permission is always required to approach the witness in all cases. This is imperative to assure that no party, witness, court reporter or juror is surprised by the movement and this makes the best record for trial.
- All exhibits should be marked *prior* to trial.
- In the case of audio or video recordings, transcripts should be produced by the offeror and exchanged beforehand.
- At the conclusion of the trial, Judge Benson will let the jury know that they are free to talk, or not talk, to the attorneys and will invite them to talk with the Court, if they wish.

VI. Sentencing in Criminal Cases

- Prior to sentencing the court will review the Pre-Sentence Investigation and Sentencing Guidelines Worksheet, victim input if provided in advance, Rule 25 evaluations, etc.
- All motions for a departure should be e-filed at least 3 days in advance of the Sentencing Hearing.

**THE HONORABLE JUDGE HOYOS
FOURTH JUDICIAL DISTRICT
PRACTICE POINTERS & PREFERENCES**

I. Contact with Chambers

- It is recommended that all communication, whether scheduling, logistics, or substantive be sent to staff at 4thJudgeHoyosStaff@courts.state.mn.us.
- All communication via e-mail must have opposing party copied on the e-mail. Judge Hoyos asks that counsel include probation or other agencies when applicable.
- In special situations, Judge Hoyos may allow telephone conferences in accordance with the rules. Counsel should contact staff to make arrangements.

II. Motion Practice

- Counsel should e-mail staff as soon as possible in advance of a hearing to inform the Court that a contested motion is resolved or partially resolved. Counsel should ensure that all parties are included in the e-mail.
- Anyone requesting a continuance or change in scheduling should first contact opposing party. E-mail communication with staff and opposing party is preferred.
- Any stipulations or proposed orders should be submitted by e-mail to staff and ensure that all parties are included in the e-mail.

III. Written Submissions-Briefing

- Generally, Judge Hoyos prefers to have oral arguments after motions are filed, followed by briefings if necessary.
- All written submissions must be e-filed by the end of business on the due date.
- Courtesy copies should be sent to staff by e-mail. Counsel should ensure that all parties are included in the e-mail.
- Counsel is encouraged to submit copies of case authority along with their written submissions.

IV. In-Court Proceedings

- Judge Hoyos prefers that counsel arrive on time for hearing, and that they notify staff if there will be a delay.

- Notice for a waiver of appearance should be done in writing in accordance with the rules.
- Judge Hoyos prefers that counsel stand while speaking on the record.
- Oral arguments do not need to recap the material from written submissions. Oral arguments should be focused on highlighting the most important issues.
- If additional case law is presented at oral argument, a hard copy of that case should be provided to the court and opposing party.
- Judge Hoyos encourages the use of technology in the courtroom. Counsel should have the technology prepared ahead of time.
- Counsel should be prepared to engage in an active discussion of the issues during oral arguments.

V. Pretrial Procedures

- Judge Hoyos does not have standing orders in regards to pretrial procedures. He prefers to address the procedures for each case individually based on the aspects of each case.
- *Voir dire* should not be used to argue the theories of the case. If there are sensitive questions, Judge Hoyos is willing to ask those questions if requested to do so.
- Jury instructions, special verdict forms, and witness lists should be filed as soon as practical.
- Special jury instructions that differ from the CRIMJIGs should be submitted beforehand – ideally at least one week before trial.
- Witness lists must be submitted at least 7 days in advance of the trial.
- Counsel should keep Judge Hoyos and opposing party aware of any limited availability and time restrictions for witnesses.
- Motions *in limine* are open to all potential issues. The motions will normally be argued on the first day before trial. Complex issues should be handled before trial.
- Judge Hoyos is willing to engage in chambers discussions if it would be beneficial. All offers should be placed on the record.
- Judge Hoyos is happy to schedule settlement conferences if they would be beneficial to the case. Counsel should contact staff to make those arrangements.

VI. Trial

- Trial days are generally scheduled to start at 9:00 am with a 20-minute break every hour and a half. Normally, there will be a break at noon for lunch. Trial will continue until 4:30 pm, but it may be extended to 5:00 pm if need be to finish with a witness.
- Judge Hoyos strongly prefers to start *voir dire* on the first day of trial.
- In the case of objections, counsel should stand and state the basis for the objection. Counsel may request to approach the bench if they wish to argue the objection; however, counsel should ensure that argument is not made before the jury.
- Counsel should remain at their table when examining witnesses.
- Counsel may move about while addressing the jury, but must maintain a reasonable distance from the jury.
- Counsel should request permission to publish evidence to the jury. Counsel may not ask questions while evidence is being published to the jury. For that reason, the use of technology is encouraged to facilitate presenting evidence to the jury.
- Counsel must ask permission to approach witnesses.
- Ideally, all exhibits should be marked the day they would be presented at trial.
- In the case of audio or video recordings, transcripts must be produced by the offeror and exchanged prior to trial.
- At the conclusion of the trial, Judge Hoyos will let the jury know that they are free to talk, or not talk, to the attorneys. Judge Hoyos uses jury evaluation forms and is happy to share information from the jury.

VI. Sentencing in Criminal Cases

- Counsel should inform staff if there are any victim impact statements, or if there are any security concerns.
- Counsel should also inform staff if there are any other witness statements or character witnesses that will be presented at sentencing.
- All motions for a departure should follow the rules. Notice should be given at the plea hearing, followed by a written motion with the basis.