

The Committee has adopted the following amended model civil jury instruction, effective October 25, 2018.

ADOPTED

[NEW] M Civ JI 4.10 Weighing Expert Testimony

You have heard opinion testimony from one or more witnesses who have been offered as experts. As in the case of other witnesses, you are free in your considered judgment to accept all, part, or none of the testimony of an expert witness.

Comment

The factors listed in former M Civ JI 90.22A are left to argument of counsel.

History

M Civ JI 4.10 was SJI 2.10. Adopted October 2018.

The Committee has deleted the following model civil jury instruction, effective October 25, 2018.

DELETION

[DELETED] M Civ JI 90.22A Valuation Witnesses

History

M Civ JI 90.22A was added October 1981. Amended July 2017. Deleted October 2018.

The Committee solicits comment on the following proposals by April 15, 2019. Comments may be sent in writing to Timothy J. Raubinger, Reporter, Committee on Model Civil Jury Instructions, Michigan Hall of Justice, P.O. Box 30052, Lansing, MI 48909-7604, or electronically to MCJI@courts.mi.gov.

PROPOSED

[AMENDED] M Civ JI 15.01 Definition of Proximate Cause

When I use the words “proximate cause” I mean first, that the negligent conduct

negligence must have been a cause of plaintiff's injury, and second, that the plaintiff's injury must have been of a type that is a natural and probable result of the negligent conduct that it was reasonably foreseeable that the negligence could result in harm or injury to plaintiff.

Note on Use

This definition should accompany instructions which use the term “proximate cause.”

When a defendant presents evidence that the conduct of a person other than the plaintiff or force was a proximate cause, M Civ JI 15.03 and the appropriate instruction from M Civ JI 15.04, 15.05, and 15.06 should be given in addition to this instruction.

[NEW] M Civ JI 15.01A Definition of the Proximate Cause

When I use the words “the proximate cause” I mean first, that the negligence must have been a cause of plaintiff's injury, and second, that it was reasonably foreseeable that the negligence could result in harm or injury to plaintiff, and third, that if there was more than one negligent actor, the defendant's negligence was the one most immediate, efficient, and direct cause of the plaintiff's injury. There is no special definition of what it means to be the one most immediate, efficient, and direct proximate cause and its application is for your judgment. However, to be the one most immediate, efficient, and direct proximate cause, the defendant's negligent act or omission does not need to be the last in time before the plaintiff's injury.

Proximate cause refers to negligent human conduct. Non-human and natural causes cannot be considered to be a proximate cause of injury, although they can be considered in determining whether the damages were reasonably foreseeable to the defendant. Only negligent human acts or omissions can be the proximate cause of the injury.

Note on Use

Use only in determining a defendant's entitlement to governmental immunity pur-

suant to the Government Tort Liability Act (GTLA) or as otherwise required by statute.

PROPOSED

The Committee proposes to amend this instruction in order to conform it to amendments to MCL 330.1401.

[AMENDED] M Civ JI 171.02 Mental Illness: Involuntary Treatment—Elements and Burden of Proof

Two requirements must be met for you to find that an individual is a person requiring treatment.

First, the person must be mentally ill. Mentally ill means that the person suffers from a substantial disorder of thought or mood which significantly impairs [his/her] judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

However, mental illness is not the only requirement.

The second requirement is that the person, as a result of that mental illness, is subject to one or more of the following conditions:

(a) the person can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure [himself/herself] or another person and has engaged in an act or acts or made significant threats that substantially support this expectation, or

(b) the person is unable to attend to those of [his/her] basic physical needs such as food, clothing, or shelter, which must be attended to in order for the person to avoid serious harm in the near future; and the person has demonstrated that inability by failing to attend to those basic physical needs, or

(c) the person's judgment is so impaired that [he/she] is unable to understand [his/her] need for treatment and the person's continued behavior as a result of mental illness can reasonably be expected impaired judgment, on the basis of competent clinical opinion, to result in significant physical harm to [himself/herself] or others presents a substantial risk of significant physical or mental harm to the individual in the near

future or presents a substantial risk of physical harm to others in the near future, or

(d) the person's understanding of the need for treatment is impaired to the point that:

(i) [he/she] is unlikely to voluntarily participate in or adhere to treatment voluntarily that has been determined necessary to prevent a relapse or harmful deterioration of [his/her condition, and

~~(ii) [he/she] is currently noncompliant with treatment that has been recommended by a mental health professional and that has been determined to be necessary to prevent a relapse or harmful deterioration of [his/her] condition, and~~

(iii) [he/she] noncompliance with treatment has been a factor in [his/her] placement in a psychiatric hospital, prison, or jail at least two times within the last 48 months or whose noncompliance with treatment has been a factor in [his/her] committing one or more acts, attempts, or threats of serious violent behavior within the last 48 months.

An individual who meets both requirements is considered to be "a person requiring treatment."

The petitioner has the burden of proving by clear and convincing evidence that the respondent is a person requiring treatment.

If you find that the petitioner has met [his/her] burden of proving that the respondent is a person requiring treatment, your verdict will be:

"We find that the respondent is a person requiring treatment."

If you find that the petitioner has not met [his/her] burden of proving that the respondent is a person requiring treatment, your verdict will be:

"We do not find that the respondent is a person requiring treatment."

Notes on Use

In the case of a hearing on a petition for discharge, this instruction must be modified to show that the alleged person requiring treatment is the petitioner.

If there is evidence of senility, epilepsy, alcoholism, or drug dependence, to determine if this instruction should be given, see § 401(2) of the Mental Health Code, MCL 330.1401(2).

This instruction should be followed by the definition of clear and convincing evidence in M Civ JI 8.01.

Comment

See MCL 330.1401 for the definition of "person requiring treatment" and MCL 330.1400(g) for the definition of "mental illness."

This instruction is designed for use in any of four types of hearings under the Mental Health Code. See MCL 330.1452.

The first type of hearing is initiated by a petition or application to the probate court for involuntary mental health treatment of a person. The hospitalization portion of an initial order may not exceed 60 days, and alternative treatment or combination of alternative treatment and hospitalization may not exceed 90 days. MCL 330.1472a(1). The person may not be retained beyond the expiration of the initial order without a further hearing.

The second hearing involves a petition by the hospital director or alternative treatment supervisor that asserts that the person continues to be a person requiring treatment and requests further hospitalization for a period of not more than 90 days, alternative treatment, or a combination of them for a period of not more than one year. MCL 330.1472a(2). The person may not be retained beyond the expiration of the second order without a third hearing. At the third hearing, the court may issue a continuing order of hospitalization for not more than one year, a continuing order of alternative treatment for not more than one year, or a continuing order of combined hospitalization and alternative treatment for not more than one year but the hospitalization portion of a combined order may not exceed 90 days. MCL 330.1472a(3). Succeeding continuing orders for involuntary mental health treatment may not exceed one year. MCL 330.1472a(4).

After a continuing (one-year) order of involuntary mental health treatment, the hospital director or alternative treatment program supervisor must review the person's status and report it to the court and notify the person, his or her attorney, his or her guardian, or a person designated by the individual, as well as other enumerated per-

sons every six months. MCL 330.1482 and 330.1483. If the report concludes that the person continues to require treatment, the person is entitled to challenge it in a hearing on a petition for discharge. MCL 330.1484.

In each of these hearings, the person is entitled to have the question whether he or she requires treatment heard by a jury. MCL 330.1458; *In re Wagstaff*, 93 Mich App 755; 287 NW2d 339 (1979). In each type of hearing, it must be shown that the person is a "person requiring treatment" as that term is defined in the statute. MCL 330.1401. The standard of "person requiring treatment" applies equally to continuing orders and the initial order. *People ex rel Book v Hooker*, 83 Mich App 495; 268 NW2d 698 (1978). The burden is on the petitioner (or the hospital director in the case of a petition for discharge) to meet this standard by clear and convincing evidence. MCL 330.1465; *Addington v Texas*, 441 US 418; 99 S Ct 1804; 60 L Ed 2d 323 (1979).

Once the jury determines that the person is a "person requiring treatment," the judge determines the appropriate treatment, and the person has no right to have the jury determine appropriate treatment or hospitalization. *In re Portus*, 142 Mich App 799; 371 NW2d 871 (1985).

History

Added May 1984. Amended June 2000, July 2012.



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The Committee has adopted the following amended model civil jury instruction, effective October 25, 2018.

ADOPTED

M Civ JI 172.12 Termination of Conservatorship of an Adult

The conservatorship of [*name of protected person*] will be terminated by the court unless the respondent proves by clear and convincing evidence that:

(a) by reason of [mental illness/mental deficiency/physical illness or disability/chronic use of drugs/chronic intoxication/confinement/detention by a foreign power/disappearance/[*other*]],

(b) [*name of protected person*] continues to be unable to manage [his/her] property and business affairs effectively.

The court will furnish a Special Verdict Form to assist you in your duties. Your answers to the questions in the Special Ver-

dict Form will assist the court in making its final disposition in this case.

Notes on Use

This instruction should be preceded by the definition of clear and convincing evidence in M Civ JI 8.01. On the applicability of the clear and convincing standard for termination of conservatorships established before April 1, 2000, see MCL 700.8101(2)(b).

This instruction should not be used for the termination of a conservatorship for a minor's estate and affairs. See MCL 700.5401(2).

Comment

MCL 700.5431.

Mental illness is defined in MCL 330.1400(g). Mental incompetency is discussed in *In re Swisher's Estate*, 324 Mich 643; 37 NW2d 657 (1949) and cases cited therein.

History

M Civ JI 172.12 was added January 1985. Amended June 2000. Amended October 2018.

The Michigan Supreme Court has delegated to the Committee on Model Civil Jury Instructions the authority to propose and adopt Model Civil Jury Instructions. MCR 2.512(D). In drafting Model Civil Jury Instructions, it is not the committee's function to create new law or anticipate rulings of the Michigan Supreme Court or Court of Appeals on substantive law. The committee's responsibility is to produce instructions that are supported by existing law.

The members of the Committee on Model Civil Jury Instructions are:

Chair: Hon. Mark T. Boonstra

Reporter: Timothy J. Raubinger

Members: Benjamin J. Aloia; Robert L. Avers; Hon. Jane M. Beckering; Mark R. Bendure; Hon. James N. Erhart; Hon. Kathleen A. Feeney; Gary N. Felty Jr.; William B. Forrest III; Donald J. Gasiorek; James F. Hewson; Hon. Michael L. Jaconette; Amy M. Johnston; C. Thomas Ludden; Daniel J. McCarthy; Daniel J. Schulte; Hon. Douglas B. Shapiro; Judith A. Susskind; Hon. Donald A. Teeple; Thomas Van Dusen; Thomas W. Waun.



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