



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

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MEMORANDUM

Date	Action Requested
June 30, 2006	Please Review
To	Deadline
Members of the Judicial Council	N/A
From	Contact
Mary M. Roberts, General Counsel Robin Seeley, Attorney, Advisory Committee on Criminal Jury Instructions	Robin Seeley Office of the General Counsel 415-865-7710 phone 415-865-7664 fax robin.seeley@jud.ca.gov
Subject	
Impact of Amendment of Rule 855(c) on Publication of Jury Instructions	

Introduction

In July 2003, the Judicial Council voted to approve the *California Civil Jury Instructions (CAJI)*. Matthew Bender/LexisNexis (Lexis), the official publisher, released its first two-volume edition shortly thereafter, followed by West Publishing (West) a few weeks later.

On August 26, 2005, the council voted to amend rule 855(c) of the California Rules of Court (rule 855). The amendment allows the Administrative Office of the Courts (AOC) to require commercial publishers to obtain permission before publishing the Judicial Council-approved jury instructions. As a result, the AOC may require commercial publishers to:

1. Accurately publish the instructions;
2. Accurately credit the Judicial Council as the source of the instructions; and
3. Not claim copyright to the instructions.

Under amended rule 855 the AOC may also require commercial publishers to pay a fee or royalties for permission to publish the instructions.¹

On the same date the council voted to approve the *California Criminal Jury Instructions* (*CALCRIM*), which had not yet been either published or placed in the public domain.

The council also requested that staff report back regarding experiences in dealing with the publishers of the jury instructions in connection with the amendment to rule 855. This report is provided in response to that request.

Current Publishers of the Judicial Council Jury Instructions

Our official publisher, Lexis, as well as West and AccessLaw, currently publish *CACI* and *CALCRIM* under contract with the AOC. Lexis provides the instructions in many formats including online, in an interactive software program, and in print. West does the same. AccessLaw publishes the instructions in a CD-ROM format only.

Contract Provisions

The contracts with the two non-official publishers, West and AccessLaw, grant each of them a license to publish the jury instructions subject to publication requirements permitted the AOC by rule 855. Specifically, the publishers must:

1. Provide any proposed publication to the AOC for review and approval of its content and appearance;
2. Prominently display the Judicial Council copyright notice; and
3. Include prominent acknowledgement of Judicial Council members, task force members, advisory committee members, and others who have contributed to the jury instructions.

They must also pay royalties.

The official publisher contract with Lexis, entered into prior to the amendment of rule 855, expires in September 2006. The request for proposal for the new official publisher contract will contain terms similar to those described above. Although not specifically obligated to conform to requirements similar to those contained in the West agreement, Lexis has consistently followed AOC requests concerning the content of the publication.

¹ A copy of the relevant language of the amended rule is attached for reference on page 4 of this report.

Effect of Amendment of Rule 855

Staff have developed positive and collaborative working relationships with the representatives of the three publishers, all of whom have been responsive to our specific requests regarding the content and appearance of the published volumes.

As a result, the appearance of the Judicial Council jury instructions vis-à-vis other pattern instructions is distinctly different and attribution of authorship as well as copyright notices are prominent and complete.

Financial Outcome

Pursuant to the terms of our contracts with all three publishers, the AOC has received a total of \$169,844.77 in royalty payments to date.

Conclusion

As a result of the amendment to rule 855, the council now controls the content, appearance, copyright notices, and attributions of authorship of *CACI* and *CALCRIM* and receives royalties from all commercial publishers who sell them.

RJS/cf

cc: Hon. Carol A. Corrigan
Hon. Sandra L. Margulies
Hon. James D. Ward, ret.
Hon. H. Walter Crosky

Rule 855. Judicial Council Jury Instructions

(a)–(b) * * *

- (c) [Public access]** The Administrative Office of the Courts must provide copies and updates of the approved jury instructions to the public on the judicial branch’s public Web site. The Administrative Office of the Courts may contract with an official publisher to publish the instructions in both paper and electronic formats. The Judicial Council intends that the instructions be freely available for use and reproduction by parties, attorneys, and the public, except as limited by this subdivision. The Administrative Office of the Courts may take steps necessary to ensure that publication of the instructions by commercial publishers does not occur without its permission, including, without limitation, ensuring that commercial publishers accurately publish the Judicial Council’s instructions, accurately credit the Judicial Council as the source of the instructions, and do not claim copyright of the instructions. The Administrative Office of the Courts may require commercial publishers to pay fees or royalties in exchange for permission to publish the instructions. As used in this rule, “commercial publishers” means entities that publish works for sale, whether for profit or otherwise.

(Subd (c) amended effective August 26, 2005.)