

Civil Jury Instructions Committee
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016

April 6, 2022
3:00 to 5:00 pm
Virtual Meeting

Minutes

MEMBER ATTENDANCE:

P = present in person; V = present virtually; A= absent.

Lincoln Combs	V	Kara Klima (Secretary)	Resigned
Ben Cooper	V	Steven Kramer	V
Alicia Funkhouser (Chair)	V	Richard Langerman	V
Hon. Pamela Gates	A	PJ Lopez (Vice-Chair)	V
Dominic Gomez	V	Hon. Scott McCoy	A
Darlene Gonzalez	V	Nathan Meyer	V
Amy Heiserman	V	David Shughart	A
Jack Klecan	V	Daniel Torrens	V

OTHER ATTENDEES: None

State Bar Staff: Ilona Kukan

Minutes taken by: Richard Langerman

CALL TO ORDER – Alicia Funkhouser

Time: The meeting was called to order by Chair, Alicia Funkhouser, at 3:05.

Minutes: The minutes of the December 1, 2021 meeting were approved. The minutes of the March 2, 2022 meeting were approved.

Standards Subcommittee: Subcommittee chair, P.J. Lopez, reported that the subcommittee had considered the comment submitted regarding proposed instructions Standard Nos. 5A and 5B. P.J. reported that the subcommittee recommended final approval of the proposed instructions. Upon motion, the committee unanimously approved the proposed instructions (Standard Nos. 5A and 5B).

Privacy Subcommittee: Subcommittee chair, Richard Langerman, reported on the work of the subcommittee regarding a proposed instruction for use in cases involving claims of appropriation of name or likeness. The Committee discussed the subcommittee draft of the proposed instruction for Invasion of Privacy No. 12. The consensus of the Committee was to remove the phrase “give permission or otherwise” from the proposed instruction.

Richard also reported that a new damages instruction would need to be drafted because the case law makes clear that appropriation claims include damages for commercial harms which are not included in other types of invasion of privacy claims. Richard reported that the subcommittee was uncertain whether damages for personal harms are also allowed in appropriation claims, but that the subcommittee would continue its work and draft a proposed damages instruction.

Bad Faith Subcommittee: Subcommittee chair, Ben Cooper, reported on the work of the subcommittee. Ben reported that the Committee had previously approved the proposed first party instructions (Bad Faith Nos. 1-6). However, in light of revisions to the third party instructions, the subcommittee recommended conforming changes to Bad Faith No. 1 and Bad Faith No. 3. The Committee then discussed the proposed third party instructions (Bad Faith Nos. 7-14). In the discussion of Bad Faith No. 10, Ben reported that the subcommittee was “befuddled” as a result of inconsistent case law. Accordingly, proposed instruction Bad Faith No. 10 includes three options for the court to choose from depending on the court’s determination of the controlling case law. In the discussion of Bad Faith No. 13A it was pointed out that a change was needed in the second line of the instruction from “name of plaintiff” to “name of insured”.

It was agreed to defer any votes until the May meeting. A subcommittee meeting was scheduled to consider any further suggestions from the Committee regarding instructions 7-13 and to finalize a proposed instruction for Bad Faith No. 14.

Personal Injury Damages Subcommittee: No report.

Breach of Warranty Subcommittee: No report.

Call to the Public: Because Chair Funkhouser had to depart, Vice-Chair Lopez made the call to the public.

The meeting was adjourned at 4:46.