

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

September 4, 2019
3:00 to 4:00 pm
Location: State Bar of Arizona

Minutes (Approved – October 2, 2019)

MEMBER ATTENDANCE:

P = present in person; T = present telephonically; A= absent.

Steve Kramer (Chair)	P	Benjamin Naylor	A
Alicia Funkhouser (Secretary)	A	Rodney Ott	T
Lincoln Combs	P	Sara Regan	T
Ben Cooper	P	Kara Klima	P
Dominic Gomez	T	Daniel Torrens	T
Ivan Hannel	A	Hon. Kenton Jones	P
Richard Langerman	P	Jack Klecan	P
Patrick Lopez	A	Hon. Pamela Gates	A
Hon Karen Mullins	P	David Shughart	P
Hon. Roger Brodman	P		

OTHER ATTENDEES:

None

State Bar Staff: Iona Kukan

Minutes taken by: Iona Kukan

I. CALL TO ORDER

Called to Order by: Steve Kramer

Time: 3:08 p.m.

- II. Review and approval of meeting minutes of June 5, 2019:** Richard moves to approve with corrections. Judge Mullins seconded. Motion carried.

III. Agenda Items

1. **Introductions of new members** – All attending members introduced themselves.
2. **Medical Malpractice Emergency Care Instructions** – Tabled to next meeting in October due to Ms. Funkhouser’s absence.
3. **Revisions to current Preliminary Instructions** – Judge Mullins reported that she is working on revisions and will have them available for circulation at the next meeting. Judge Mullins reported that the “Admonition” Instruction needed to be revised and tightened up, as it is too long – lots of repetitive stuff. It is important to emphasize in this instruction that the jury members are prohibited from doing their own research and that they need to base their decisions on the evidence presented in the case and nothing else and that there are no exceptions to this rule. Judge Mullins also will check to see the admonition instruction language used in other jurisdictions.
4. **Product Liability Instructions** – Richard Langerman reported that the subcommittee met twice last spring and at the May 2019 meeting circulated a detailed memo about the proposed revisions with supporting case law. He indicated that the subcommittee had a good sense what changes needed to be made. They will be meeting again before the next meeting to finalize their revisions and that the instructions will be circulated to the whole committee for comment at the October 2019 meeting.
5. **Bad Faith Instructions** – Ben Cooper reported that the subcommittee had been inactive for the past 2 years. Ben said that there are a lot of changes throughout first and third-party bad faith instructions. The subcommittee met in 2013 and 2015 and made revisions that were circulated to the committee, approved and then went out for comment to the general membership. Comments were received and several members had a problem with certain instructions. The full committee asked the subcommittee to review the comments and come back with a response to the comments. Many comments were received to the more controversial third-party bad faith instructions. Ben reported that the subcommittee needs to concentrate first on the less controversial ones, submit them to the full committee for approval and then concentrate on the more controversial ones. Ben will recirculate the instructions as they stand now with the comments. Since the last subcommittee meeting, several members dropped off as their terms ended. Current members are Ben Cooper, Richard Langerman, David Shughart, and PJ Lopez. Ben asked for volunteers and Kara Klima agreed to serve on that committee.
6. **Status of Employment & Labor Law Section’s Efforts to add new employment instructions** – Steve Kramer. Steve reported that the section met in August and want to expand on the current employment instructions. Steve suggested that this committee should provide them with principles that they should follow, not going past case law, keeping them simple, give them a copy of the “Statement of Purpose and Approach found in front of the current RAJIs, be neutral (not favoring either side). Ask them to read *Rosen v. Knaub* and *Anderson v. Nissei* case law for further guidance.

They provided a list of employment law related topics: Restrictive Covenants, Trade Secrets Act, Treble Damages, Paid Sick Time, Retaliation, Medical Marijuana (they will run into problems here because there is no Arizona case law and will have to depend on

statutory language), Minimum Wage Law, Independent Contractors, Terminations, Temporal Proximity and “Cat’s Paw Theory” (what??); Blacklisting; Invasion of Privacy.

They need to start with a manageable 3 or 4 instructions focusing on main employment cases that might end up in jury’s hands and not on obscure employment law topics. Also, as this committee does not have any expertise in employment law, they need to draft these instructions and have some other members attend the full committee meetings.

7. **Any New Business** – None.

CALL TO THE PUBLIC Steve Kramer

Meeting adjourned by: Steve Kramer (Richard moves, Judge Mullins seconds. Motion carried) at (4:05 P.M. time).

Next Meeting October 2, 2019 at 3:00 p.m.