

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

February 7, 2018
3:00 to 5:00 pm
Location: State Bar of Arizona

Minutes (Approved March 7, 2018)

MEMBER ATTENDANCE:

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

Jodi Bohr (Chair)	P	Aaron Martin	T
Steve Kramer (Vice Chair)	P	Hon Karen Mullins	A
Alicia Funkhouser (Secretary)	P	Kevin Myer	A
Laura Antonuccio	A	Benjamin Naylor	A
Ben Cooper	A	Rodney Ott	P
Hon. David Gass	T	Sara Regan	A
Steven German	A	Carrie Ryerson	T
Jamie Glasser	T	Carl Sammartino	A
Dominic Gomez	T	David Shughart	T
Ivan Hannel	A	Hon. Samuel Thumma	T
Paul Kular	A	Daniel Torrens	T
Richard Langerman	P	David Weber	T
Patrick Lopez	T		
Valerie Marciano	A		

OTHER ATTENDEES:

Guests: N/A

State Bar Staff: Ilona Kukan

Minutes taken by: Alicia Funkhouser

I. CALL TO ORDER

Called to Order by: Jodi Bohr

Time: 3:01 p.m.

II. Review and approval of meeting minutes of November 1, 2017: The date is corrected at the top. Rodney moved to approve the minutes subject to the change. Steve seconded. Motion carried.

III. (specific items taken from agenda follow here, in order, based on agenda)

1. Consideration of revisions to Negligence 8 – Negligent Infliction of Emotional Distress (Witnessing Injury to Another) and recent cases – Steve Kramer
Discussion held as to whether the “zone of danger” and the “close personal relationship” are questions of fact for the jury or whether they will have been decided as a matter of law. Jodi recommends that we add a Use Note saying that if it has already been established as a matter of law, or include the element itself in the Use Note to be used only in the rare instances that it has not been decided as a matter of law. Judge Gass suggests the use of brackets. Steve suggests a bracket with a note to see the Use Note.

We will delete the reference to the Pennsylvania case. Jodi suggests a change to the word “decided” in place of “established or not.” Also, “The element of Zone of Danger is required. See Keck.”

Rodney suggests that we move element 6 elsewhere. Rodney also asks whether “close personal relationship” is ever a question of fact for the jury. Discussion held and determined that it is likely sometimes a question of fact for the jury.

Discussion held as to whether the Comment is too long. Reference to the Restatement 3rd will be removed. Discussion held as to whether the last paragraph will be removed as well.

Continued discussion on what is a close personal relationship.

Discussion held on separating them into separate Use Notes, i.e. Use Note 1, Use Note 2, Use Note 3 – Zone of Danger, etc.

Bolded case names will be fixed. Ilona will fix formatting issues.

Rodney raises issue of the word “observation” and recommends “perception.” Discussion held as to whether it should read “experience and/or observation” or just “experience”. Decision:

For 4: Plaintiff suffered emotional distress as a result of experiencing the event that caused bodily harm to _____.

For 5: Plaintiff suffered physical injury or illness due to the emotional distress.

Rodney suggests citing a few more cases, such as Kauffman and Guerro. Richard suggests Quinn. Steve indicates all the other cases are really just citing Keck and we don't want to confuse it with Negligence 9.

2. Consideration of revisions to Negligence 9 – Negligent Infliction of Emotional Distress (Direct) and recent cases – Steve Kramer

Discussion held to change element 4 the same way we changed it in the previous instruction so it is not passive voice (element 5 in Negligence 8).

Jodi recommends grammatical and stylistic changes. She will scan the notes to Steve.

Recommendation to further delete the last sentence under Use Note 1
First paragraph with Quinn will be shortened and the holding will be stated. \

In Use Note 2, there will again be a citation to Quinn and the paragraph with “the court in Keck” will also be deleted. Additional changes are recommended and a redline version will be provided at the next meeting.

Agenda Items Not Reached:

3. Consideration of revised spoliation instruction – Richard Langerman
4. Discuss status of Bad Faith instructions (since member comment) – Ben Cooper
5. Update on Subcommittee status/New business.

CALL TO THE PUBLIC Jodi Bohr

Individuals addressing the (Board/Committee). None present.

Meeting adjourned by: Jodi Bohr (Richard moves, Rodney seconds. Motion carried) at (4:58 P.M. time)