

**Civil Jury Instructions Committee**  
State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100  
Phoenix, Arizona 85016

October 3, 2018  
4:00 to 5:00 pm  
Location: State Bar of Arizona

**Minutes (Approved February 6, 2019)**

**MEMBER ATTENDANCE:**

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

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

**OTHER ATTENDEES:**

**Judge Roger Brodman (is a new member)**

**State Bar Staff: Ilona Kukan**

**Minutes taken by: Alicia Funkhouser**

**I. CALL TO ORDER**

**Called to Order by: Steve Kramer**

**Time: 4:02 p.m.**

- II. Review and approval of meeting minutes of September 5, 2018:** Richard moved to approve, Alicia seconded. Motion carried.

**III. Agenda Items**

1. Welcome new members Jack Klecan and Hon. Kenton Jones.
2. Spoliation – (Richard) Richard requests the discussion focus on only the issues that will go to the jury, rather than all issues under the sun. The drafted jury instruction presumes that there has been a pretrial motion for sanctions and that the judge has determined that the conduct and prejudice was bad enough to warrant a jury instruction regarding presumption.

PJ says he just had a trial and the evidentiary issues were decided before the judge and a similar instruction on spoliation was going to be given. The case settled before the jury instructions.

Discussion held again on the variable sanctions that could be awarded. Richard explains that this instruction only addresses one possible sanction for spoliation, and doesn't cover all possible ways a judge might determine spoliation instructions.

Judge Gass discusses he does not like the portion of the instruction that informs the jury about what the judge has decided:

~~I have determined that~~ [Name of party] failed to preserve evidence regarding [describe unpreserved evidence] that [he] [she] [it] was required to preserve. Because [name of party] failed to preserve the evidence, you may, but are not required to, assume that the evidence would have been unfavorable to [name of party].

Alicia moves "I have determined that" should be removed. Rodney seconds. Committee approves.

Richard asks for a vote on whether "you may but are not required to assume" coupled with Comment 2 addresses the concerns with judicial discretion.

Steve moves to approve the instruction above. Alicia & Rodney second. Discussion held regarding an introductory sentence. Motion carried. Jack abstained.

3. Review and discuss Traffic Citations Instruction – Judge Gass  
The source is 28-1599. Tucson Cab is the case. Our copy does not have the citation.

Changes discussed as follows:

“In reaching your verdict, you should not consider or discuss whether a party was or was not cited for traffic violations. Issuance of a citation or non-issuance of a citation has no bearing on whether or not a party was at fault, or the damages, ~~if any~~, a party has suffered.”

Judge Gass will send Steve the sources and Use Notes and we will revisit the instruction.

4. Review and discuss new revisions to Medical Malpractice – Emergency Room Instructions – Alicia Funkhouser  
Discussion held regarding the length of the instruction and its complexity. The subcommittee will work on breaking it up if we can. Discussion held as to whether it is better to break it up or not. Other suggestions discussed and the subcommittee will review.
5. Title change from “Personal Injury Fault Not at Issue” to “RAJI for Damages Only Trials” – Steve Kramer.  
Discussion held regarding changes to the introduction and title only. Decision made to change the title to Damages Only Trials. Richard moves to approve. Judge Jones seconds. Committee approves.

**Agenda Items Not Reached:**

6. Review and discuss new/revised instructions prepared by Miscellaneous (Other) Subcommittee – Judge Mullins
  - a. Review and discuss revised Standard 8 – Judge Mullins
  - b. Review and discuss revised Preliminary/Standard Final Instructions – Judge Mullins

**CALL TO THE PUBLIC Steve Kramer**

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

**Meeting adjourned by: Steve Kramer** (Judge Jones moves, Rodney seconds. Motion carried)  
at (5:00 P.M. time)