

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

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

Minutes (Approved April 4, 2018)

MEMBER ATTENDANCE:

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

Jodi Bohr (Chair)	P	Aaron Martin	P
Steve Kramer (Vice Chair)	P	Hon Karen Mullins	A
Alicia Funkhouser (Secretary)	P	Kevin Myer	A
		Benjamin Naylor	T
Laura Antonuccio	T	Rodney Ott	P
Ben Cooper	T	Sara Regan	T
Hon. David Gass	T	Carrie Ryerson	A
Steven German	A		
Jamie Glasser	T	David Shughart	T
Dominic Gomez	T	Hon. Samuel Thumma	P
Paul Kular	A	Daniel Torrens	T
Richard Langerman	P	David Weber	T
Patrick Lopez	T	Ivan Hannel	T
Valerie Marciano	A	Shayna Watts	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: 3:04 p.m.

- II. Review and approval of meeting minutes of February 7, 2018:** Steve moved to approve the minutes subject to the change. Judge Thumma seconded. Motion carried.

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

1. Negligence 8 – Negligent Infliction of Emotional Distress (Witnessing Injury to Another) – Steve Kramer
Discussion held regarding the blue note, quoting Keck. Decision to keep the citation and description.

Use Note 4 will be turned into Comment 1.

Rodney makes typographical suggestions. Rodney suggests using a bracket instead of a footnote for [name of the person physically injured in the event].

Citation at the end of Use note 2 will be corrected.

We will also remove the internal citations to Prosser and Keaton in Use Note 2.

Additional typos discussed. Aaron points out some incorrect abbreviations.

Rodney recommends a change to the title of Comment 2 as well, which is agreed on.

Motion to approve Negligence 8 with the changes (Rodney), second (Judge Thumma). Motion carried.

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

Use Note numbering will be corrected. The damages note will be made a comment. Rodney recommends using the same language from “zone of danger” being a jury question from RAJI 8.

Use note 3 will be re-titled.

Citation to the previous RAJI will be omitted.

Motion to approve Negligence 9 with the changes (Rodney), second (Aaron). Motion carried.

3. Spoliation – Richard Langerman.

Changes from November meeting are reviewed. Decision to use “would have been” instead of “was.” Page (p.) will be corrected and pacific citations will also be added. Grammatical changes also made to Use Note 1.

Comment 2 discussed. Suggestion made to remove the comment. Richard believes that it will be helpful to the court to indicate why the instruction is different from the criminal instruction and that this matter was considered by the committee.

Judge Thumma recommends changes to Comment 2. Changes are discussed. Last sentence will be reworded in accordance with the suggestion and a new version presented.

Comment 3 discussed for the first time regarding electronically stored information under the new civil rule. Judge Thumma suggests a sentence indicating that the Civil Rule is different than the common law and the jury instruction is based on the common law. Decision made to state “This instruction is based on the common law” as the first sentence of the comment.

Typos and citations discussed.

Richard will have a new draft for the next meeting for hopeful approval.

4. Mitigation Instruction – Ben Naylor. Mitigation committee recommends that this be left to practitioners on a case by case basis. It is uncommon in tort cases and we they could not find enough case law on the subject to support the instruction. Discussion held that the committee’s resources could be better used for more commonly needed instructions.

Motion to remove consideration for the mitigation of damages instruction in torts (Naylor), seconded (Rodney). Motion carried.

5. Bad Faith – Ben Cooper – ben has located the public comments and they are ready for the subcommittee to review. He will send them out. Richard indicated that they subcommittee divided the comments into controversial and noncontroversial. They already dealt with the noncontroversial instructions.

Jodi suggests that we not go through all the comments that were the same controversies that we already reviewed. Discussion held as to whether they can just be summarized as to what the real issues were. Bad faith will be available

Agenda Items Not Reached:

6. Update on Subcommittee status/New business.

Alicia will draft a Use Note in Medical Malpractice about the standard of proof for emergency medical care.

Richard wanted to address a citation to the Nuisance Instruction. Jodi will send the email to Rodney for review.

Ivan may propose a new medical battery instruction.

Alicia will propose a change to personal injury damages in May.

Judge Thumma discusses new changes to the Verdict form, which he hopes to have in April.

CALL TO THE PUBLIC Jodi Bohr

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

Meeting adjourned by: Jodi Bohr (Jodi moves, Rodney seconds. Motion carried) at (4:49 P.M. time)