

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

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

Minutes (Approved May 2, 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	P
Alicia Funkhouser (Secretary)	A	Kevin Myer	A
		Benjamin Naylor	T
Laura Antonuccio	T	Rodney Ott	P
Ben Cooper	P	Sara Regan	T
Hon. David Gass	A	Carrie Ryerson	A
Steven German	A		
Jamie Glasser	T	David Shughart	A
Dominic Gomez	A	Hon. Samuel Thumma	P
Ivan Hannel	P	Daniel Torrens	P
Paul Kular	A	David Weber	A
Richard Langerman	P		
Patrick Lopez	T	Shayna Watts	A
Valerie Marciano	A		

OTHER ATTENDEES:

Guests: Hon. Barry C. Schneider (Ret.)

State Bar Staff: Ilona Kukan

Minutes taken by: Ben Cooper

I. Call to Order

Called to Order by: Jodi Bohr

Time: 3:03 p.m.

II. Review and approval of meeting minutes of March 7, 2018.

A motion was made to approve the minutes. The motion was seconded. The motion carried unanimously.

III. Spoliation Instructions

The Committee addressed the draft spoliation instructions. Richard Langerman explained that this was the third time the instructions were before the full committee, and he reviewed the proposed changes. He noted that Comment 3 was added to point out that the adverse-inference instruction is based on the common law; Arizona Rule of Civil Procedure 37(g)(1) is somewhat different and applies in some but not all situations.

Richard Langerman moved to adopt the revised instruction. Jodi Bohr seconded the motion. It was recommended to have the instruction conformed to the Bluebook to remove “*supra*” and “p.” In addition, it was proposed to add in Use Note 2 permission to use another appropriate word in intentional-act situations beyond “destroyed,” such as “deleted” or “erased.” The Committee agreed to modify Use Note 2 to read: “destroyed [or other similar phrase suggesting intent].”

Subject to these changes, the motion passed unanimously.

IV. Nuisance Instructions

Rodney Ott suggested adding to the instruction on public nuisance a citation to the recent opinion in *Hopi Tribe v. Arizona Snowbowl Resort Ltd. Partnership*, No. 1 CA-CV 16-0521, ___ Ariz. ___, 2018 WL 771809 (Ariz. App. Feb. 8, 2018). The case concerns standing to raise a public-nuisance claim (there, the use of reclaimed water at Snowbowl), but it does not address the elements of such a claim. Ben Cooper suggested incorporating the case into a comment, because it discussed the type of damages required to maintain a public-nuisance claim. The Committee agreed that Rodney would bring back to the subcommittee the idea of adding a citation or parenthetical to the introduction.

V. Miscellaneous Other Instructions.

Judge Samuel Thumma addressed the Closing Instructions. The subcommittee undertook to look at Closing 8 and the jury forms in light of *Perkins v. Komarnyckyj*, 172 Ariz. 115 (1992), and also to look at the handling of traffic citations. Judge Thumma stated that the subcommittee did not address traffic citations, but this did not reflect anything about the importance of traffic

cases. He indicated that the Committee will see updated Preliminary Instructions that include concepts that are standard in the Criminal RAJIs.

Standard 8 and Verdict Forms. The Committee specifically addressed Standard 8 and including six verdict forms that reflect three stopping-off forms at which there may be nonunanimous verdicts (liability, apportionment of fault, and damages). It was agreed that Sources should note the change in light of *Perkins*. The Committee discussed how to address permissible or mandatory participation in subsequent phases and the risk of quotient verdicts. Ben Cooper noted that Nebraska has a pattern instruction on quotient verdicts. It was proposed to instruct at the damages stage, “If the jury finds” or “Even if you disagree on liability, you must continue” It was also discussed whether it would be error for a juror to withdraw from consideration under *Hall v. Delvat*, 95 Ariz. 286 (1964), which is cited in *Gorski v. J. C. Penney Co.*, 103 Ariz. 404 (1968). Judge David Gass will investigate the law on quotient verdicts and whether to include an instruction on the issue. It may or may not be necessary to tweak Personal Injury Damages 1. The subcommittee will also look at the role of dissenting jurors with respect to comparative fault and damages.

Judge Mullins suggested that one could use the same verdict form for unanimous and nonunanimous verdicts, which would reduce the total number of forms from six to three. One simply needed to have alternative signature blocks, i.e., the foreperson’s signature for unanimous verdicts and the majority’s signatures for nonunanimous verdicts. The form could have “if at least six” in brackets.

The Committee agreed to send Standard 8 and the verdict forms back to the subcommittee. Comments for subcommittee should be sent to Judges Thumma, Gass, and Schneider. Judge Mullins will share her forms with the subcommittee.

Preliminary Instructions. Judge Thumma noted that the revised Preliminary Instructions were taken from the Criminal RAJIs but may be equally applicable in civil cases. Preliminary 6 on the testimony of law enforcement officers is taken verbatim from the Criminal instruction; it is given in closing. Preliminary 9, regarding stipulations, is taken from the Bench Book, and may need to be placed before Preliminary 2. Ben Cooper noted that Arizona sources on stipulations in civil cases may found in the *Arizona Trial Handbook*. Preliminary 5 from the Criminal RAJIs may be appropriate without the last two sentences. Preliminary 15 is useful, but the second paragraph should be struck because it is in Admonitions. Preliminary 10, regarding Bench Conferences and Recesses, is taken verbatim from Criminal 9.

Jodi Bohr recommended that any other proposed changes to the Preliminary Instructions be submitted to the subcommittee, and they should be kept as short as possible. Judge Thumma said that the subcommittee would try to source the instructions.

VI. May Meeting

Jodi Bohr explained that the May meeting would be the last of the year. The agenda includes the following topics:

- Emergency Room Instruction / Medical Malpractice
- Miscellaneous (non-traffic), including Standard 8, verdict forms, Preliminary Instructions.
- Insurance Bad Faith
- Quotient verdicts

VII. Call to the Public:

Jodi Bohr made a call to the public. Individuals addressing the Committee: None present.

Meeting adjourned by: Jodi Bohr. Jodi Bohr moved to adjourn. Rodney Ott seconded the motion. The motion carried unanimously. The meeting adjourned at 4:49 p.m.