

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

May 2, 2018
3:00 to 5:00 pm
Location: State Bar of Arizona

Minutes (Approved August 8, 2018)

MEMBER ATTENDANCE:

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

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

OTHER ATTENDEES:

Guests: Barry Schneider

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 April 4, 2018: Steve discussed a change regarding whether the term “must” or “may” was decided. The minutes should reflect that that was discussion and a decision was not made. Judge Thumma moved to approve the minutes subject to the change. Rodney seconded. Motion carried.

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

1. Verdict Form Revisions (Judge Mullins) – Discussion held regarding Judge Mullins’ Memo regarding the Verdict forms in light of the Perkins case. Subcommittee (Judge Gass, Judge Mullins, Judge Thumma and Ret. Judge Schneider) met and came to the conclusion that split verdict forms are not required. Judge Schneider recommends a change to the standard instruction where we inform the jury that only 6 of 8 are necessary for liability, and that should be determined first. Then, all jurors deliberate damages. Discussion held as to how this would actually be worded and implemented.

The next issue is that if 6 jurors agree on liability, and then a different 6 agree on damages, do we need a different verdict form? Judge Thumma suggests changing Standard 8, and leaving the verdict forms as-is. Richard suggests a comment or Use Note indicating that the Perkins case doesn’t answer whether we need a split verdict form or what happens when certain jurors agree on liability and different jurors agree on damages.

Richard moves that the sense of the committee is that we need Perkins language in Standard 8 and that we need a use note or comment reflecting the above. Alicia and Jodie indicate a motion is not necessary but the consensus is reflected in the minutes.

2. Preliminary Instructions – (Judges Thumma & Mullins) – The instructions remain a work in progress but are being discussed at the subcommittee level. The redline changes in the document are not new from the last meeting. Steve suggests adding citations to the Rules of Evidence where applicable. Judge Thumma indicates some of the Rules of Civil Procedure might also apply.

Steve suggests on Preliminary 3 a change from the passive voice at the end of the instruction. Judge Thumma indicates that the subcommittee has not taken a fresh look at the instructions as a whole. Discussion held regarding the scope of the subcommittee as that is not the subcommittee’s current charge.

Richard wants to move Preliminary 8 to after Preliminary 5. Richard further discusses additional recommended changes to the order of the preliminary instructions as follows:

After Evidence --> Statement of lawyers and Rulings --> Stipulations --> Rulings of the court.

Ivan suggests changing “stipulation” to agree and taking out the legalese.

Judge Thumma suggests that everyone review the Preliminary instructions and send Ilona comments in that regard by June 1.

3. Nuisance – (Rodney)

Discussion held regarding the new Snowbowl case. Rodney incorporated discussion in footnote 4. Richard moves to adopt the language. Rodney seconds. Motion carried.

4. Medical negligence – Alicia discusses the issues surrounding the changed burden of proof of clear and convincing evidence on medical negligence involving emergency and on-call physicians. The changed burden of proof does not apply to damages but only applies to liability and causation. Ivan and Judge Mullins will join the subcommittee.

5. Discussion held of agenda items for August meeting. Ben recommends a new instruction about quotient verdicts.

Agenda Items Not Reached:

6. Traffic Citations (Judge Gass)

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 (4:19 P.M. time)