

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

June 5, 2019  
4:00 to 5:00 pm  
Location: State Bar of Arizona

**Minutes (Approved – September 4, 2019)**

**MEMBER ATTENDANCE:**

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

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

**OTHER ATTENDEES:**

**None**

**State Bar Staff: Iona Kukan**

**Minutes taken by: Alicia Funkhouser**

**I. CALL TO ORDER**

**Called to Order by: Steve Kramer**

**Time: 4:00 p.m.**

- II. Review and approval of meeting minutes of May 1, 2018:** Richard moves to approve. Judge Mullins seconded. Motion carried.

### III. Agenda Items

1. Medical Malpractice – Discussion held regarding Medical Negligence 2 and 2a which are new proposed instructions with the ER burden of proof. Alicia will continue to research whether we can change more probably true than not true to more likely than not. Judge Brodman indicates concern regarding multiple causes and confusion in changing the wording when all elements are actually less than 50%. Alicia will provide the committee with a research memo regarding the use of the two phrases.
2. Misc Committee - Judge Mullins. Comments have been received and are being processed into redline form. The preliminary instruction needs to be tightened up, as it is too long.

Steve recommends making a change in the “you are not to guess” section that “you are not to guess the witness’s answer.”

3. Richard – Product Liability instructions.

The committee reviewed Richard’s memo and it is referred to herein. Paragraph 1 and 2- Discussion held regarding the “Introduction” and the changes were acceptable to the committee.

Paragraph 4 – Discussion held regarding changing the language to “multiple claims of fault against parties and nonparties” regarding multiple defendants and causation.

Paragraph 5 – Discussion held regarding concerns about the “unnecessary and often unhelpful” language in the instruction, which comes from the RAJI Introduction. Perhaps a change to indicate that those types of instructions might be a comment on the evidence.

Paragraph 3 – Golanka. Discussion held regarding the state of the law on the rebuttable presumption that the injured person would heed the warning if an adequate warning existed. Practitioners acknowledge that Golanka is the law, but the Dole Food has not been overturned. Judge Mullins suggests adding “but see” as a reference to the Dole and the Sheehan cases. Richard moves to have the subcommittee go back and use the existing language as a template and include something like “but see Dole and/or Sheehan.” The motion is seconded and carries.

4. Steve discusses a Proposal regarding Rule 68 Offers of Judgment (abrogating or modifying). Lincoln and PJ are interested.

#### **Agenda Items Not Reached:**

N/A

**CALL TO THE PUBLIC Steve Kramer**

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

**Meeting adjourned by: Steve Kramer** (Richard moves, Judge Mullins seconds. Motion carried) at (5:15 P.M. time).

**Next Meeting August 7, 2019 at 3:00 p.m. – CANCELED.**