

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

March 2, 2022  
3:00 pm  
Virtual Meeting

**Minutes**

**MEMBER ATTENDANCE:**

**P = present in person; V = present virtually; A= absent.**

Lincoln Combs	V	<del>Kara Klima (Secretary)</del>	Resigned
Ben Cooper	V	Steven Kramer	V
Alicia Funkhouser (Chair)	V	Richard Langerman	V
Hon. Pamela Gates	A	PJ Lopez (Vice-Chair)	V
Dominic Gomez	V	Hon. Scott McCoy	A
Darlene Gonzalez	A	Nathan Meyer	V
Amy Heiserman	A	David Shughart	A
Jack Klecan	V	Daniel Torrens	V

**OTHER ATTENDEES:** None

**State Bar Staff:** Ilona Kukan

**Minutes taken by:** Richard Langerman

**CALL TO ORDER – Alicia Funkhouser**

**Time:** 3:06 p.m.

**Minutes:**

The minutes of the February 2, 2022 meeting were approved. No vote was taken to approve the minutes of the December 1, 2021 meeting.

**Vicarious Liability Subcommittee:**

Subcommittee chair, P.J. Lopez, reported regarding the subcommittee’s work to revise the vicarious liability instruction (Standard No. 5) in light of the Supreme Court’s decision in *Engler v. Gulf Interstate Engineering*, 230 Ariz. 55 (2012). After discussion, the Committee voted (9-0) to adopt proposed instruction Standard No. 5A. The Committee also voted (9-0) to adopt proposed instruction Standard No. 5B (as amended) (adding the phrase “and therefore [name of defendant] is not responsible for the actions of [name of person claimed to be agent]” at the end of the instruction).

**Privacy Instructions:**

Former subcommittee chair, Richard Langerman, reported regarding the proposed comments adopted to Privacy No 9A and Privacy 10. Richard reported that since the comments were conditionally adopted, the opinion in *Christakis v. Deitsch*, 250 Ariz. 246 (App. 2020) has become final and therefore the amended comment to Privacy 10 can be included in the current RAJI's. Richard also reported that the Supreme Court had recently vacated the opinion in *Rogers v. Mroz*, \_\_\_ Ariz. \_\_\_, 479 P.3d 410 (App. 2020), and therefore the proposed amended comment to Privacy 9A should be withdrawn.

Richard then reported that the court of appeals in *Canas v. Bay Entertainment, LLC*, \_\_\_ Ariz. \_\_\_, 498 P.3d 1082 (App 2021), held that Arizona recognizes a remedy for misappropriation of name or likeness, and therefore, a new instruction could be adopted for Privacy No. 12. Dan Torrens volunteered to work with Richard to draft a proposed instruction.

**Bad Faith Subcommittee:**

Subcommittee chair, Ben Cooper, reported that the subcommittee continued working on the third-party bad faith instructions.

**Guidelines Subcommittee:**

Subcommittee chair, Richard Langerman, reported that the subcommittee wanted further guidance regarding the role and authority of the Committee. In specific the subcommittee wanted clarification whether the Committee has authority to recommend instructions in the absence of Arizona precedent. The consensus of the Committee was that instructions should not be included in the RAJI's unless the instruction is supported by Arizona precedent. Ben indicated that the Committee has no authority to decide what the law "should be". However, Ben indicated that due to practical considerations it might be advisable for the Committee to fill gaps in Arizona authority on an important non-controversial point of law if the legal principle is included in a Restatement of the Law.

Committee chair, Alicia Funkhouser, requested that the subcommittee continue working on a proposed set of principles and guidelines for consideration by the full Committee.

**Damages Subcommittee:**

Subcommittee chair, Richard Langerman, reported that the subcommittee is still waiting for the Supreme Court to rule on a pending petition for review in the *Benedict* case.

Call to the Public: Chair Funkhouser made a call to the public.

A motion to adjourn was approved.

The meeting was adjourned at 4:23.