

## Civil Jury Instructions Committee

State Bar of Arizona  
4201 N. 24<sup>th</sup> Street, Suite 100

Phoenix, Arizona 85016

May 1, 2024

3:00 pm

Virtual Meeting

### Minutes

#### MEMBER ATTENDANCE:

**P = present virtually; A= absent.**

Justin Ackerman	P	Judge Melissa Julian	P
Judge Bradley Astrowsky	P	Jack Klecan	P
Arcangelo Cella	A	Steven Kramer	P
Lincoln Combs	P	Richard Langerman	P
Ben Cooper	P	Greg Larson	P
Alicia Funkhouser	P	PJ Lopez - Chair	A
Dominic Gomez	P	Jesse Ritchey	P
Darlene Gonzalez	A	Joel Robbins	P
Robert Greer	P	James Smith	P
Douglas Imperi	P	Daniel Torrens	A
Jesse Egbert	P	Jayme Weber	P

**Call to Order:** Chair P.J. Lopez was absent. The meeting was called to order by former chair, Alicia Funkhouser, at 3:02.

The minutes of the April 3, 2024 meeting were approved.

**APSA Subcommittee:** Subcommittee member, Greg Larson, reported on the work of the subcommittee. Greg reported that the subcommittee was working on a draft set of instructions that had been circulated, but had not yet been finalized by the subcommittee.

**Adverse Inference Subcommittee:** Subcommittee member, Jayme Weber, reported on the work of the subcommittee. There was a discussion of a proposed instruction. One issue discussed was the use of the term “incriminate”. Suggestions were made of alternative language including “might expose a person to criminal charges,” “might show involvement in a crime,” and “evidence that could be used against them in a criminal case.”

There was a discussion of the proposed use notes and comment. It was suggested that Use Note No. 2 be formulated as a Comment, rather than as a Use Note. There was a discussion about whether to include Use Note No. 3 (whether the adverse inference rule may be applied when the witness is not a party). The consensus of the Committee was that the Use Note would be helpful. A suggestion was made to look at the case law applying Evidence Rule 803(d)(2)(c) (when statements may be imputed to a corporate party).

There was a discussion about the proposed Comment. Several members suggested that the material of the Comment would be helpful.

The proposed instruction was referred back to the subcommittee for further work.

**Commercial Torts Subcommittee:** Subcommittee chair, Jayme Weber, reported on the work of the subcommittee.

**Premises Liability Subcommittee:** Subcommittee chair, Steve Kramer, reported that the subcommittee had been making progress on proposed revisions to the existing premises liability instructions. However, Steve reported that a recent decision of the Court of Appeals (*Perez v. Circle K*) appeared to conflict with existing precedent and that the subcommittee felt that it was not possible to finalize the premises liability instructions until the Supreme Court had resolved the conflict between the holding in *Perez* and the existing case law.

**Guidelines Subcommittee:** Subcommittee chair, Richard Langerman, led a discussion of the proposed Principles and Guidelines. The consensus of the Committee was that the Mission, Legal Requirements and Principles sections were appropriate and helpful.

There was a discussion of Guideline 6 regarding the inclusion of lists of factors in instructions. While the consensus of the Committee was that it would be helpful to have a guideline regarding the listing of factors, there were several suggested changes to the language of the proposed guideline.

The proposed Statement of Principles and Guidelines were referred back to the subcommittee with the expectation that there will be a vote to adopt the Principles and Guidelines at the June meeting.

**Other Business:** None.

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

**Adjournment:** The meeting was adjourned at 4:48.