

Judicial Branch of Arizona
in Maricopa County

Alternative Dispute Resolution (ADR)

SHORT TRIAL PROGRAM BENCHBOOK

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CLICK ON JUDGE *PRO TEMPORE* LINK

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The Short Trial Program is under the direction of Alternative Dispute Resolution (ADR), Judicial Branch of Arizona in Maricopa County. All questions that arise prior to trial, at trial or after trial may be directed to ADR

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- This book is intended to guide and help the judge *pro tempore* while conducting a Short Trial alternative to arbitration. This book **is not** all inclusive of materials that will be necessary for the Short Trial.
- The parties may stipulate to questions for the judge to ask during *voir dire*.
- The parties may supply the judge with stipulated jury instructions.
- The parties may stipulate, with judge *pro tempore* approval, to change the process and procedures contained in this handbook.

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DESCRIPTION OF SHORT TRIAL PROCESS

- 1. Attorneys and judge *pro tempore* should meet by 8:30 a.m. to resolve any evidentiary problems or any other disputes between counsel.**
- 2. Ten jurors are escorted to the courtroom between 9:15 a.m. and 9:30 a.m.**
- 3. Judge will begin *voir dire* by swearing in the panel and having jurors introduce themselves, disclose employment, marital status, children, etc. The judge generally describes the circumstances of the case and asks if they, family members, or friends have been involved in such an event.**
- 4. Each counsel is then allowed five (5) minutes for follow up questions of the potential jurors.**
- 5. Both counsel are given an even number of strikes to bring the jury to four (4) persons. (If an odd number of potential jurors exist, the judge will make a strike to even the number.)**
- 6. Jurors are escorted back to the courtroom, and the names of the jurors who will sit for the trial are read aloud. The other jurors are excused and directed to return to the Jury Assembly Room (1st floor, South Court Tower).**
- 7. The judge swears in the panel. Each juror will be given a note pad and pen by the bailiff.**
- 8. The judge describes to the panel the expedited nature of the short trial and emphasizes that it is no less official or important than a normal trial.**

9. Counsel for plaintiff and defendant are allowed ten (10) minutes each for their opening statement.
10. Counsel for plaintiff and defendant are allowed two (2) hours each to present their case in chief: Examine witnesses, cross-examination, redirect, and rebuttal. The judge or the judge's designee is responsible for tracking all time constraints.
11. Once all evidence is presented, counsel for plaintiff and defendant are allowed ten (10) minutes each for closing arguments.
12. Upon completion of closing arguments, the judge reads the jury instructions previously stipulated by the parties and supplies the jury with appropriate verdict form(s). Once instructions are given to the jury, they are directed to the jury room for deliberations.

OATHS USED IN CIVIL TRIALS

An oath is the swearing to the truth of a statement or swearing to perform an act faithfully and truthfully.

When administering an oath, remember the following:

1. Stand and face the person(s) or jury panel being sworn in.
2. Raise right hand and instruct the jury or witness(es) to raise their right hand, if they have not done so voluntarily.
3. Speak in a clear and normal voice.

WITNESS

“You (and each of you) do solemnly swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?”

BAILIFF'S OATH (To take charge of jury for deliberation)

“Do you swear that you will take charge of this jury and protect their deliberations from all outside interference and communication, and when they have reached a verdict, you will bring them back into court without revealing their verdict to anyone, so help you God?”

OUTSIDE INTERPRETER

“You do solemnly swear that you will translate from English into the _____ language all such oaths as may be administered and such questions as may be asked the witness in this cause, and that you will translate into English their answers thereto, to the best of your skill and ability, so help you God?”

Affirmations

It will sometimes happen that a person does not want to take an oath and will wish to be affirmed. Ask the person to please wait until the rest of the panel has been sworn, and then give the affirmation.

When administering an affirmation, the clerk should not raise his/her hand. If a witness or juror does, ignore it.

The affirmation can be applied and substituted for any oath by changing the words **"YOU DO SOLEMNLY SWEAR..."** to **"YOU DO AFFIRM..."** and changing **"SO HELP YOU GOD?"** to **"THIS YOU DO UNDER THE PAINS AND PENALTIES OF PERJURY?"**

JUDGE PRO TEPORE SPEECH PRIOR TO JURY SELECTION

Ladies and gentlemen, we thank you for coming today. I would like to begin by explaining what will happen in the courtroom this morning. We will start with a panel of _____ jurors.

For today's trial, we need a panel of four (4) jurors. Therefore, _____ jurors will be dismissed from this panel and instructed to return to the Jury Commissioner's Office.

The attorneys and I will ask you questions, which you need to answer honestly. Once questioning is complete, we will take a break to allow the attorneys time to choose the jury.

If you are not excused, you will remain on the panel and participate in today's trial. If you are excused, you must return to the Jury Assembly Room; check in at the desk and await further instructions.

If you are stricken from the jury, please do not think it is a reflection on you. The jury for this trial may only contain four (4) jurors. Even if all jurors are acceptable, some must be stricken to arrive at the correct number of jurors.

I will now swear you in and begin questioning the panel.

VOIR DIRE OATH

I will read a combined oath and affirmation. If you are taking the oath, please raise your right hand; if you are taking the affirmation, you may leave your hand down.

Do you solemnly swear or affirm that you will answer truthfully all questions asked of you by the judge and attorneys about your qualifications to serve as a trial juror in this case. If swearing - so help you God. If affirming - subject to punishment for perjury.

GENERAL VOIR DIRE

QUESTIONS

1. YOUR NAME
2. YOUR OCCUPATION OR PROFESSION
 - a. If employed,
 - i. NAME OF EMPLOYER and
 - ii. HOW LONG YOU HAVE WORKED THERE?
 - iii. WHAT TYPE OF WORK YOU DO?
 - b. If presently unemployed or retired, WHAT WERE YOU DOING BEFORE RETIREMENT OR UNEMPLOYMENT?
3. ARE YOU MARRIED? If so:
 - a. What is your SPOUSE'S OCCUPATION OR PROFESSION?
 - b. NAME OF SPOUSE's EMPLOYER and
 - c. WHAT TYPE OF WORK DOES YOUR SPOUSE DO?
 - d. If your spouse is presently unemployed or retired, WHAT WAS YOUR SPOUSE DOING BEFORE RETIREMENT OR UNEMPLOYMENT?
4. HOW MANY CHILDREN DO YOU HAVE? WHAT ARE THEIR AGES?
5. HAVE YOU SERVED ON A JURY BEFORE?
 - a. WAS IT A CRIMINAL CASE OR CIVIL CASE?
 - b. WHERE DID YOU SERVE AS A JUROR?
 - c. WHEN?
 - d. WHAT WAS THE OUTCOME OF THAT TRIAL, if you recall?
6. **HAVE YOU OR ANY IMMEDIATE RELATIVE OR CLOSE PERSONAL FRIEND BEEN INVOLVED IN A LAWSUIT, EITHER AS A PLAINTIFF OR A DEFENDANT? IF SO: BRIEFLY DESCRIBE THE KIND OF CASE, WHO WAS INVOLVED, AND THE OUTCOME.**

JUDGE *PRO TEMPORE* SPEECH AFTER JURY SELECTION

Ladies and gentlemen, you have been selected to participate in what the court calls a “Short Trial”. A Short Trial is a one-day trial where the verdict is to be returned by the end of today. Though this trial is quicker than what you may deem to be a normal trial, your job as a juror is still very important.

The attorneys will be able to summarize evidence and read directly from depositions. What the attorney tells you is evidence and should be evaluated this way. Each side will be allowed two hours to present their case to you and ten minutes each for Opening and Closing Arguments. You will now be given the juror’s oath.

When we get close to the noon hour, I will discuss with counsel and the jury what works best for this case in terms of a lunch break. We will also take periodic breaks during the trial. If there are no questions, I will begin reading the instructions you need prior to the beginning of trial.

TRIAL OATH

I will read a combined oath and affirmation. If you are taking the oath, please raise your right hand; if you are taking the affirmation, you may leave your hand down.

“Do you solemnly swear or affirm that you will try the issues in this case and render a true verdict according to the law and the evidence. If swearing - so help you God. If affirming - subject to punishment for perjury.”

PRE-TRIAL JURY INSTRUCTIONS (PRELIMINARY, RAJI)

Now that you have been sworn, I will briefly tell you something about your duties as jurors and give you some instructions. At the end of the trial, I will give you more detailed instructions. Those instructions will control your deliberations.

It will be your duty to decide the facts. You must decide the facts only from the evidence produced in court. You must not speculate or guess about any fact. You must not be influenced by sympathy or prejudice.

You will hear the evidence, decide the facts, and then apply those facts to the law I will give to you. That is how you will reach your verdict. In doing so you must follow that law whether you agree with it or not.

You must not take anything I may say or do during the trial as indicating any opinion about the facts. You and you alone are the judges of the facts.

You will decide what the facts are from the evidence presented here in court. That evidence will consist of witness testimony, any documents and materials received into evidence as exhibits, and any facts stipulated to by the parties or which you are instructed to accept.

You will decide the credibility and weight to be given to any evidence presented in the case, whether it is direct evidence or circumstantial evidence.

Admission of evidence in court is governed by rules of law. I will apply those rules and resolve any issues that arise during the trial concerning the admissibility of evidence.

If an objection to a question is sustained, you must disregard the question. You must not guess what the answer to the question might have been. If an exhibit is offered into evidence and

an objection to it is sustained, you must not consider that exhibit as evidence. If testimony is ordered stricken from the record, you must not consider that testimony for any purpose.

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility or weight you should give to any evidence that has been admitted.

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for accuracy and truthfulness that people use in determining matters of importance in everyday life, including the following factors:

- The witness' ability to see or hear or know the things they testified to.
- The quality of the witness' memory.
- The witness' manner while testifying.
- Whether the witness has any motive, bias, or prejudice.
- Whether the witness is contradicted by anything the witness said or wrote before trial or by other evidence.
- The reasonableness of the witness' testimony when considered in the light of the other evidence.

Consider all of the evidence in light of reason, common sense, and experience.

A witness qualified as an expert by education or experience may state opinions on matters in that witness' field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part. You should give it as much credibility and

weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

At the end of the trial you will have to make your decision based on what you recall of the evidence. You will not be given a written transcript of any testimony; you should pay close attention to the testimony as it is given.

You have been provided with note pads and pens. If you wish, you may take notes during the trial. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. Do not let note taking distract you so that you miss hearing or seeing other testimony. When you leave the jury box for a recess, leave your notes in the seats.

Whether you take notes or not, you should rely upon your own memory of what was said and not be overly influenced by the notes of other jurors.

Do not be influenced at all by my taking notes at times. What I write down may have nothing to do with what you will be concerned with at this trial.

I am now going to say a few words about your conduct as jurors. I am going to give you some "dos" and "don'ts", mostly "don'ts", which I will call "the admonition".

You may discuss the case amongst yourselves when you are all together in the jury room, as long as you reserve judgment about the outcome of the case until all of the evidence has been presented and the lawyers have made their final arguments.

To avoid even the appearance of improper conduct, do not talk with any of the parties, lawyers, or witnesses about anything until after the case is over, even if it concerns innocent matters or those having nothing to do with the case.

Do not talk to anyone else about the case or about anyone who has anything to do with it. Do not let anyone else talk to you about the case until the trial has ended and you have been discharged as jurors. Until then, you may tell people that you are on a jury and you may tell them the estimated schedule for the trial, but do not tell them anything else except to say that you can't talk about it until it is over.

Wear your juror badge at all times in and around the courthouse so everyone will know you are on a jury. If someone should try to talk to you about the case, stop him/her or walk away. If you overhear others talking about the case, stop them or walk away. If anything like this happens, report it to me or any member of my staff, as soon as you can.

Do not do any research or make any investigation about the case on your own. Do not view or visit the locations where the events of the case took place.

Finally, do not form an opinion about any fact or about the outcome of the case until you have heard and considered all the evidence, the Closing Arguments, and the rest of the instructions I will give you on the law. Keep an open mind during the trial. Form your opinions only after you have the opportunity to discuss the case with each other in the jury room, at the end of the trial.

Before each recess, I will not repeat the entire admonition I have just given you. I will probably refer to it by saying, "please remember the admonition," or something like that. However, even if I forget to make any reference to it, remember that the admonition still applies at all times during the trial.

If, at any time during the trial, you have difficulty hearing or seeing something that you should be hearing or seeing, or if you get into personal distress for any reason, raise your hand and let me know.

If you have any questions about parking, restaurants, or other personal matters relating to your jury service, feel free to ask one of the court staff. But remember that the admonition applies to court staff, as it does to everybody else. Do not try to discuss the case with court staff.

There may or may not be news media coverage of the trial. What the news media covers is up to them. If there is media coverage, you must avoid it during the trial. If you do encounter something about this case in the news media during the trial, end your exposure to it immediately and report it to me as soon as you can. If there are cameras in the courtroom during the trial, do not be concerned about them. Court rules require that the proceedings be photographed or televised in such a way that no juror can be recognized.

You may wish to ask questions of witnesses during this trial. You may do so under the following arrangements:

After counsel has examined each witness, I will ask you whether the jury has any questions for the witness. Please remember that you are under no obligation to ask questions. Because questioning witnesses is the primary responsibility of counsel, you are not encouraged to ask large numbers of questions. Keep in mind that both counsel know the case better than you do or I do. They each will be attempting to place before you all the evidence needed to assist you in reaching a proper verdict.

If you have a question, write it down. Do not put your name or juror number on the question. The questions must be directed to the witness and not to the lawyers or the judge. The

purpose of a question is to clarify the evidence that has been presented, not to explore theories of your own or to discredit a witness. Do not discuss your questions with other jurors.

The bailiff will collect the questions and I will then consider whether they are permitted under our rules of evidence and relevant to the subject matter of the witness's testimony. I will also discuss them with counsel. If the court and counsel agree that the question(s) may be properly asked, I will then read the question(s) to the witness.

It is important to understand that the rejection of a question because it is not within the rules of evidence or because it is not relevant is no reflection upon you. If a particular question cannot be asked of the witness, you must not speculate about what the answer might have been.

Burden of proof means burden of persuasion. On any claim, the party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met its burden, consider all the evidence, which bears on that claim regardless of which party produced it.

Plaintiff claims that defendant was at fault. [Defendant claims that plaintiff was at fault]

[Add claims/defenses/elements]

The trial will now begin. First, each counsel may make an opening statement. An opening statement is neither evidence nor argument. It is an outline of what that counsel thinks the evidence will be. It is offered to help you understand and follow the evidence that will be presented during the trial.

Next, plaintiff will present witnesses and defendant may cross-examine them. Then, defendant may present witnesses and plaintiff may cross-examine.

After the evidence has been presented, the attorneys will make their closing arguments.

I will then instruct you on the law that you are to apply deciding the case.

You will then go to the jury room to deliberate and decide the case.

POST TRIAL JURY INSTRUCTIONS (STANDARD, RAJI)

STANDARD 1	DUTY OF JURORS
STANDARD 2	EVIDENCE
STANDARD 3	RULINGS OF THE COURT
STANDARD 4	ARGUMENTS OF COUNSEL
STANDARD 5	STIPULATIONS
STANDARD 6	CREDIBILITY OF WITNESSES
STANDARD 7	EXPERT WITNESS
STANDARD 9	BURDEN OF PROOF
STANDARD 13	IMPASSE IN JURY DELIBERATIONS
STANDARD 15	CLOSING INSTRUCTIONS

STANDARD 1

Duty of Jurors

I will now tell you the rules you must follow to decide this case. I will instruct you on the law. It is your duty to follow the law whether you agree with it or not.

It is also your duty to determine the facts. You must determine the facts only from the evidence produced in court. You should not speculate or guess about any fact. You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion you may feel I have about the facts. You are the sole judges of the facts.

You must take account of all my instructions on the law. You are not to pick out one instruction, or part of one, and disregard the others. However, after you have determined the facts, you may find that some instructions do not apply. You must then consider the instructions that do apply, together with the facts as you have determined them.

Decide the case by applying the law in these instructions to the facts.

SOURCE: RAJI (CIVIL) Standard 1, as modified; MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (1985), ¶ 12.01, as modified.

STANDARD 2

Evidence

You will decide what the facts are from the evidence presented here in court. That evidence consists of testimony of witnesses, any documents and other things received into evidence as exhibits, and any facts stipulated or agreed to by the parties or which you are instructed to accept.

You will decide the credibility and weight to be given to any evidence presented in the case, whether it be direct or circumstantial evidence.

SOURCE: RAJI (CIVIL) Standard 2, as modified; MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (1985), §§ 10.02 and 12.05, as modified.

STANDARD 3

Rulings of the Court

Admission of evidence in court is governed by rules of law. I have applied those rules during the trial and resolved any issues concerning the admission of evidence.

If an objection to a question was sustained, you must disregard the question and you must not guess what the answer to the question might have been. If an exhibit was offered into evidence and an objection to it was sustained, you must not consider that exhibit as evidence. If testimony was ordered stricken from the record, you must not consider that testimony for any purpose. [If evidence was admitted for a limited purpose, you shall consider that evidence only for that limited purpose.]

Do not concern yourselves with the reasons for my rulings on the admission of evidence. Do not regard those rulings as any indication from me of the credibility or weight you should give to any evidence that has been admitted.

SOURCE: RAJI (CIVIL) Standard 2, as modified; MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (1985), ¶¶ 10.05, 10.06, as modified.

STANDARD 4

Arguments of Counsel

In the opening statements and closing arguments the lawyers have talked to you about the law and the evidence. What the lawyers said is not evidence, but it may help you to understand the law and the evidence.

SOURCE: RAJI (CIVIL) Standard 3.

STANDARD 5

Stipulations

The parties are permitted to stipulate or agree that certain facts exist. You must regard any stipulated or agreed upon fact as having been proved.

SOURCE: RAJI (CIVIL) Standard 4, as modified; MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (1985), ¶ 11.04, as modified.

STANDARD 6

Credibility of Witnesses

In deciding the facts of this case, you should consider what testimony to accept, and what to reject. You may accept everything a witness says, or part of it, or none of it.

In evaluating testimony, you should use the tests for truthfulness that people use in determining matters of importance in everyday life, including such factors as: the witness's ability to see or hear or know the things the witness testified to; the quality of the witness's memory; the witness's manner while testifying; whether the witness had any motive, bias, or prejudice; whether the witness was contradicted by anything the witness said or wrote before trial, or by other evidence; and the reasonableness of the witness's testimony when considered in the light of the other evidence.

Consider all of the evidence in the light of reason, common sense, and experience.

SOURCE: RAJI (CIVIL) Standard 5, as modified; MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (1985), ¶ 10.07, as modified.

STANDARD 7

Expert Witness

A witness qualified as an expert by education or experience may state opinions on matters in that witness's field of expertise, and may also state reasons for those opinions.

Expert opinion testimony should be judged just as any other testimony. You are not bound by it. You may accept it or reject it, in whole or in part, and you should give it as much weight as you think it deserves, considering the witness's qualifications and experience, the reasons given for the opinions, and all the other evidence in the case.

SOURCE: Rule 702, Arizona Rules of Evidence; MANUAL OF MODEL JURY INSTRUCTIONS FOR THE NINTH CIRCUIT (1985), ¶ 12.07, as modified.

STANDARD 9

Burden of Proof (More Probably True)

Burden of proof means burden of persuasion. On any claim, the party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden, consider all the evidence that bears on that claim, regardless of which party produced it.

SOURCE: RAJI (CIVIL) Standard 9.

STANDARD 13

Impasse in Jury Deliberations

I have been informed you are having difficulty reaching a verdict. This instruction is offered to help you, not to force you to reach a verdict.

You may want to identify areas of agreement and disagreement and discuss the law and the evidence as they relate to the areas of disagreement.

If you still disagree, you may wish to tell the attorneys and me which issues, questions, law or facts you would like us to assist you with. If you decide to follow these steps, please write down the areas of disagreement and give the note to the bailiff. We will then discuss your note and try to help you.

SOURCE: Rule 39(h), Arizona Rules of Civil Procedure and Comment to 1995 Amendment.

STANDARD 15

Closing Instruction

The case is now submitted to you for decision. When you go to the jury room you will choose a foreman. He or she will preside over your deliberations.

At least three of you must agree on a verdict. If all four agree on a verdict, only the foreman need sign it, on the line marked "Foreman". If three agree on a verdict, all those who agree, and only those who agree, must sign the verdict on the numbered lines provided, leaving the line marked "Foreman" blank. Please print your name under your signature.

You will be given _____ forms of verdict. They read as follows (there is no significance to the order in which they are read):

SOURCE: RAJI (CIVIL) Standard 8, as modified.

MISCELLANEOUS JURY INSTRUCTIONS

- FAULT 5 DEFINITION OF NEGLIGENCE
- FAULT 6 DEFINITION OF CAUSATION
- FAULT 7 BURDEN OF PROOF
- FAULT 8 STATEMENT OF LIABILITY ISSUES
- FAULT 9 CONTRIBUTORY NEGLIGENCE
- FAULT 10 ASSUMPTION OF RISK
- FAULT 11 DETERMINING DEGREES OF FAULT
- FAULT 12 NONUSE
- NEG. 4 DUTY TO OBSERVE

FAULT 5

Statement of Claims, Definition of Fault; Definition of Negligence (Comparative Fault)

Plaintiff claims that defendant was at fault. Defendant claims that plaintiff was at fault.
[Defendant also claims that _____ was at fault.]

Fault is negligence that was a cause of plaintiff's injury.

Negligence is the failure to use reasonable care. Negligence may consist of action or inaction. Negligence is the failure to act as a reasonably careful person would act under the circumstances.

SOURCE: RAJI (CIVIL) Negligence 2A, as modified. A.R.S. § 12-2506(F)(2).

FAULT 6

Definition of Causation (Comparative Fault)

Before you can find any party [person] at fault, you must find that party's [person's] negligence was a cause of plaintiff's injury.

Negligence causes an injury if it helps produce the injury, and if the injury would not have happened without the negligence.

SOURCE: RAJI (CIVIL) Negligence 3A and 3B; *McDowell v. Davis*, 104 Ariz. 69, 448 P.2d 869 (1968); *Porterie v. Peters*, 111 Ariz. 452, 532 P.2d 514 (1975).

FAULT 7

Burden of Proof (All Parties) (Comparative Fault)

Plaintiff must prove:

- (1) Defendant was at fault;
- (2) Plaintiff was injured; and
- (3) Plaintiff's damages.

Defendant must prove:

- (1) Plaintiff was at fault.
- (2) _____ was at fault.]

SOURCE: RAJI (CIVIL) Negligence 9 and 9A, as modified.

FAULT 8

Statement of Liability Issues (Comparative Fault)

If you find that defendant was not at fault, then your verdict must be for defendant.

If you find that defendant was at fault, then defendant is liable to plaintiff and your verdict must be for plaintiff. You should then determine the full amount of plaintiff's damages and enter that amount on the verdict form. You should then consider defendant's claim that plaintiff was at fault [and defendant's claim that _____ was at fault].

SOURCE: RAJI (CIVIL) Negligence 1A and 1B, as modified.

FAULT 9

Plaintiff's Fault (Contributory Negligence)

On defendant's claim that plaintiff was at fault, you must decide whether defendant has proved that plaintiff was at fault and, under all the circumstances of this case, whether any such fault should reduce plaintiff's full damages. These decisions are left to your sole discretion.

If you decide that plaintiff's fault should reduce plaintiff's full damages, the court will later reduce those damages by the percentage of fault you have assigned to plaintiff.

SOURCE: RAJI (CIVIL) Negligence 5, as modified; A.R.S. § 12-2506(B) and (C); ARIZ. CONST., art. 18, § 5; *Heimke v. Munoz*, 106 Ariz. 26, 470 P.2d 107 (1970).

FAULT 10

Plaintiff's Fault (Assumption of Risk)

Defendant claims that plaintiff was at fault by assuming the risk of injury. A person assumes the risk of injury when he has knowledge of a particular risk, appreciates its magnitude, and voluntarily subjects himself to the risk under circumstances that show his willingness to accept that particular risk.

As to this claim, defendant must prove:

- (1) Plaintiff assumed a particular risk of injury; and
- (2) The particular risk was a cause of plaintiff's injury.

You must decide whether defendant has proved that plaintiff was at fault by assuming the risk of injury and, under all the circumstances of this case, whether any such fault should reduce plaintiff's full damages. These decisions are left to your sole discretion.

If you apply the defense of assumption of risk, the court will later reduce plaintiff's full damages by the percentage of fault you have assigned to plaintiff.

SOURCE: RAJI (CIVIL) Negligence 5A, 6, and 9B, as modified; *Hildebrand v. Minyard*, 16 Ariz. App. 583, 585, 494 P.2d 1328, 1330 (1982); *Chavez v. Pima County*, 107 Ariz. 358, 360, 488 P.2d 978, 980 (1971); ARIZ. CONST., art. 18, § 5.

FAULT 11

Determining Relative Degrees of Fault (Comparative Fault)

[If you decide that plaintiff's fault should reduce plaintiff's damages] [or] [If you find more than one [defendant] [person] at fault for plaintiff's injury], you must then determine the relative degrees of fault of all those whom you find to have been at fault.

The relative degrees of fault are to be entered on the verdict form as percentages of the total fault for plaintiff's injury.

The fault of one person may be greater or lesser than that of another, but the relative degrees of all fault must add up to 100%. This will be clear from the verdict form.

SOURCE: RAJI (CIVIL) Negligence 3C, as modified.

FAULT 12

Plaintiff's Fault (Nonuse of Seat Belt/Motorcycle Helmet)

Defendant claims that plaintiff was at fault for not using a [seat belt] [motorcycle helmet].

Nonuse of a [seat belt] [motorcycle helmet] bears on the issue of damages and not on any other issue.

On this claim, defendant must prove:

- (1) That plaintiff did not use an available and operational [seat belt] [motorcycle helmet];
- (2) That plaintiff's nonuse was unreasonable under all of the circumstances [, including consideration of whether plaintiff was of sufficient age and discretion to make nonuse unreasonable]; and

(3A) [Plaintiff's nonuse caused injuries that would not have occurred had the [seat belt] [motorcycle helmet] been used.]

(3B) [Plaintiff's nonuse increased the injuries. The increase of injuries must be shown with reasonable probability.]

On defendant's claim that plaintiff was at fault for not using a [seat belt] [motorcycle helmet], you must decide whether defendant has proved that plaintiff was at fault and, under all the circumstances of this case, whether any such fault should reduce plaintiff's full damages. These decisions are left to your sole discretion.

If you decide that plaintiff's fault should reduce plaintiff's damages, the court will later reduce plaintiff's full damages by the percentage of fault you have assigned to plaintiff.

SOURCE: *Law v. Superior Court*, 157 Ariz. 147, 755 P.2d 1135 (1988) (seat belt); *Warfel v. Cheney*, 157 Ariz. 424, 758 P.2d 1326 (App. 1988) (motorcycle helmet); ARIZ. CONST., art. 18, § 5.

VERDICT FORMS

Superior Court Of Arizona
Maricopa County

Short Trial Verdict Form

)
)
_____))
Plaintiff Name)
v) CV _____
)
)
_____)) Plaintiff Verdict
Defendant Name)

I. Plaintiff's Verdict, no comparative fault.

We, the Jury, duly impaneled and sworn in the above-entitled action, upon our oaths, do find in favor of plaintiff and find the full damages to be

\$ _____

II. Plaintiff's Verdict, comparative fault.

We, the Jury, duly impaneled and sworn in the above-entitled action, upon our oaths do find in favor of plaintiff and find the full damages to be

\$ _____

We find the relative degrees of fault to be:

Plaintiff _____%

Defendant _____%

Total 100%

1. _____ (Foreperson)

Signature

2. _____

Signature

3. _____
Signature

4. _____
Signature

**PERSONAL INJURY
FAULT NOT AT ISSUE INSTRUCTIONS**

Introduction

**Instructions To Be Used in Personal Injury Cases Where the Only
Issue To Be Tried Is Plaintiffs' Damages ("Damages Only Cases")**

In cases where neither fault nor comparative fault are at issue, instructing a jury concerning fault and liability-related concepts can confuse or mislead jurors, and waste time. Superior court judges requested the committee draft instructions for use in "Damages Only" cases. The following recommended instructions are the result of that effort.

Throughout these instructions, when *event* or *incident* is used, the parties or the court should supply a simple, clear shorthand name for the event for which the defendant has admitted fault. For example "November 11, 2016 car crash"; or "March 3, 2015 dog attack."

In wrongful death cases, where liability for causing the death is admitted, the *event* or *incident* can be described as "the death of [*name of decedent*]."

Preliminary Instructions

Use RAJI Preliminary 1-13 and 15-16, as applicable. As in any case, some instructions or parts of instructions will not be needed. For example simple damages trials seldom receive press coverage, so #10 can often be omitted. Since the issues are limited, Preliminary 14 has been modified to give a clear, simple picture of the sole issue the jury will be asked to decide, damages.

PRELIMINARY 14

Personal Injury – Fault Not At Issue

Claims Made and Issues To Be Proved

(For Cases In Which Damages is the Only Issue Being Tried)

[Give a brief description of the *[event]* *[incident]* and statement of the claims made and issues to be proved.]

This is a trial to determine damages caused by the *[event]* *[incident]*. The only issue for you to decide is the amount of damages that shall be awarded to *[name(s) of plaintiff(s)]*.

[Name(s) of plaintiff(s)] *[has]* *[have]* the burden of proving that the *[event]* *[incident]* caused *[his]* *[her]* *[their]* damages.

Burden of proof means burden of persuasion. The party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden, consider all the evidence that bears on that claim, regardless of which party produced it.

You will decide the full amount of money that will reasonably and fairly compensate *[name(s) of plaintiff(s)]* for each of the following elements of damages proved by the evidence to have resulted from the *[event]* *[incident]*:

[Insert applicable elements of damages from RAJI Personal Injury Admitted Fault 3, or in wrongful death cases, RAJI Personal Injury Admitted Fault 4, which are identical to the elements listed in RAJI Personal Injury Damages 1 and 3.]

SOURCE: RAJI (Civil) Preliminary 14; Bench Book For Superior Court Judges; RAJI (Civil) Standard 2; RAJI (Civil) Personal Injury Damages 1.

USE NOTE: If Defendant claims that the *Event/Incident* produced no injury or damages whatsoever, it may be appropriate to add, “if any,” after the word “damages” in the second sentence of this instruction. If at least some damages are undisputed, it would be inappropriate and misleading to include “if any.”

PERSONAL INJURY CASES WHERE FAULT IS NOT AT ISSUE INSTRUCTIONS

Introduction

Where fault for causing the injury-causing event is admitted or decided before trial, and there is no claim of comparative fault, Final Instructions need only consist of:

- A. Personal Injury – Fault Not At Issue 1, Causation** (replaces Fault instructions);
- B. Personal Injury – Fault Not At Issue 2, Burden of Proof (More Probably True);**
- C. Damages**, covered by
 - **Personal Injury – Fault Not At Issue 3, Measure of Damages** (replaces RAJI Personal Injury Damages 1);
 - If life expectancy is relevant, use RAJI Personal Injury Damages 5;
 - If the case involves pre-existing conditions or an unusually susceptible plaintiff, it may be appropriate to use applicable parts of RAJI Personal Injury Damages 2;
 - For wrongful death cases, use **Personal Injury – Fault Not At Issue 4, Damages for Wrongful Death of Spouse, Parent or Child** (replaces RAJI Personal Injury Damages 3) and use RAJI Personal Injury Damages 5 to address life expectancy issues.

D. Guide to Using Standard Instructions:

Depending on specific issues, evidence or witnesses in the case, parts of RAJI Standard 1, 4 and/or 9 may be appropriate. As in any case, only use Standard Instructions that are applicable, in view of the witnesses and evidence presented, parties and pertinent burdens of proof. Because liability has been admitted, Standard 5, Respondeat Superior Liability will probably never be used.

E. Closing

In Fault Not At Issue or “Damages Only” trials, the jury is given ONE form of verdict (per plaintiff), and the Closing Instruction is simplified:

Personal Injury – Fault Not At Issue 5, (instead of RAJI Standard 8 – Closing Instruction).

Verdict Form – Only one simple verdict form is needed. In cases with multiple plaintiffs, the jury should be given separate verdict forms for awarding each plaintiff’s damages. In wrongful death cases, single verdict form should list all statutory beneficiaries.

[Event/Incident]

Throughout these instructions, when *[Event/Incident]* is used, the parties or the court should supply a simple, clear shorthand name for the event for which the defendant has admitted fault. For example “November 11, 2016 car crash”; or “March 3, 2015 dog attack.”

**PERSONAL INJURY –
FAULT NOT AT ISSUE 1**
Statement of Claim, Causation

[*Name of plaintiff*] claims that the [*event*] [*incident*] caused [*his*] [*her*] injury and damages.

An event causes an injury or damage if it helps produce the injury or damage and if the injury or damage would not have happened without the event.

[*Name of plaintiff*] has the burden of proving that the [*event*] [*incident*] was a cause of [*his*] [*her*] injury and damages.

**PERSONAL INJURY –
FAULT NOT AT ISSUE 2**

**Burden of Proof
(More Probably True)**

Burden of proof means burden of persuasion. The party who has the burden of proof must persuade you, by the evidence, that the claim is more probably true than not true. This means that the evidence that favors that party outweighs the opposing evidence. In determining whether a party has met this burden, consider all the evidence that bears on that claim, regardless of which party produced it.

Source: RAJI (Civil) Standard 2.

PERSONAL INJURY – FAULT NOT AT ISSUE 3

Measure of Damages

You must decide the full amount of money that will reasonably and fairly compensate [*name of plaintiff*] for each of the following elements of damages proved by the evidence to have resulted from the [*Event/Incident*].

1. The nature, extent, and duration of the injury.
2. The pain, discomfort, suffering, disability, disfigurement, and anxiety already experienced, and reasonably probable to be experienced in the future as a result of the injury.
3. Reasonable expenses of necessary medical care, treatment, and services rendered, and reasonably probable to be incurred in the future.¹

Continued

SOURCE: RAJI (Civil) Personal Injury Damages 1.

Modifications: Depending on the evidence in the case, some of the elements in Paragraphs 2, 3, 4, 5, and 6 may be inapplicable or cumulative, and some unlisted elements may be applicable and not cumulative. Customize the instruction to fit the case.

Property Damage Claim: If there is a property claim, add, as the last element of the instruction: “(7) The difference in the value of the damaged property immediately before and immediately after the damage.”

¹ *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 129 P.3d 487 (Ct. App. 2006); *Saide v. Stanton*, 135 Ariz. 76, 77, 659 P.2d 35, 36 (1983).

² *International Harvester Co. v. Chiarello*, 27 Ariz. App. 411 (App. 1976). *See also Kaufman v. Langhofer*, 222 P.3d 272 (App. 2009) (“A cause of action for loss of consortium is also limited to spouses, parents, and children.”) (*citing Barnes v. Outlaw*, 192 Ariz. 283, 286, 964 P.2d 484, 487 (1998) (spouses); *Villareal v. State Dep’t of Transp.*, 160 Ariz. 474, 477, 774 P.2d 213, 216 (1989) (parents); *Frank v. Superior Court*, 150 Ariz. 228, 234, 722 P.2d 955, 961 (1986) (children)).

³ *See Ogden v. J.M. Steel Erecting, Inc.*, 201 Ariz. 32, 38-39, 31 P.3d 806, 812-13 (Ct. App. 2001) (holding that “hedonic damages can be a component of a general damages claim, distinguishable from, and not duplicative of, damages for pain and suffering.”); *but see Quintero v. Rogers*, 221 Ariz. 536, 539, 212 P.3d 874, 877 (Ct. App. 2009) (finding that “loss of enjoyment of life” damages are within the category of “pain and suffering” damages excluded by Arizona’s survival statute, A.R.S. § 14-3110.)

USE NOTES: If life expectancy is relevant to damages, also use Personal Injury Damages 5, Mortality Tables and Life Expectancy.

Cases involving different or unique damages issues may require additional instructions, such as RAJI Personal Injury Damages 2 (Pre-Existing Condition, Unusually Susceptible Plaintiff)

**PERSONAL INJURY –
FAULT NOT AT ISSUE 3**

Measure of Damages

Continued

4. Lost earnings to date, and any decrease in earning power or capacity in the future. Loss of love, care, affection, companionship, and other pleasures of the [marital] [parent-child] relationship.²
5. Loss of enjoyment of life, that is, the participation in life's activities to the quality and extent normally enjoyed before the injury.³

**PERSONAL INJURY –
FAULT NOT AT ISSUE 4**

Damages for Wrongful Death of Spouse, Parent, or Child

You must decide the full amount of money that will reasonably and fairly compensate [name of each survivor] [separately] for each of the following elements of damages proved by the evidence to have resulted from the death of [*name of decedent*].

1. The loss of love, affection, companionship, care, protection, and guidance since the death and in the future.
2. The pain, grief, sorrow, anguish, stress, shock, and mental suffering already experienced, and reasonably probable to be experienced in the future.
3. The income and services that have already been lost as a result of the death, and that are reasonably probable to be lost in the future.
4. The reasonable expenses of funeral and burial.
5. The reasonable expenses of necessary medical care and services for the injury that resulted in the death.

SOURCE: RAJI Personal Injury Damages 3; A.R.S. § 12-613; *City of Tucson v. Wondergem*, 105 Ariz. 429, 466 P.2d 383 (1970); *Jeffery v. United States*, 381 F. Supp. 505, 510 (D. Ariz. 1974); *Salinas v. Kahn*, 2 Ariz. App. 181, 193-95, 407 P.2d 120, 132-34 (1965).

See also White v. Greater Ariz. Bicycling Ass'n, 216 Ariz. 133, 136, 163 P.3d 1083, 1086 (Ct. App. 2007); *Mullen v. Posada Del Sol Health Care Ctr.*, 169 Ariz. 399, 400, 819 P.2d 985, 986 (Ct. App. 1991).

USE NOTE: Depending on the evidence in the case, some of the elements in paragraphs 1 and 2 may be inapplicable or cumulative, and the elements listed in paragraphs 3, 4, and 5 may be inapplicable. Customize the instruction to fit the case.

If life expectancy is relevant to damages, also use RAJI Personal Injury Damages 5, Mortality Tables and Life Expectancy.

**PERSONAL INJURY –
FAULT NOT AT ISSUE 5**

Closing Instruction

The case is now submitted to you for decision. When you go to the jury room you will choose a foreperson. He or she will preside over your deliberations.

At least six of you must agree on a verdict. If all eight agree on a verdict, only the foreperson need initial it, and place his or her juror number on the line marked “Foreperson.” If six or seven agree on a verdict, all those who agree, and only those who agree, must initial it, and place their juror numbers on the numbered lines provided, leaving the line marked “Foreperson” blank.

Your form of verdict reads as follows:

SOURCE: RAJI (Civil) Standard 8

USE NOTE: MULTIPLE PLAINTIFFS - For cases involving more than one plaintiff, provide the jury with a separate verdict form for each plaintiff, and replace the last sentence of the above instruction with:

Your forms of verdict read as follows:

USE NOTE: WRONGFUL DEATH CASES: The second verdict form provided with this instruction is for use in wrongful death cases involving multiple statutory beneficiaries. Since each statutory beneficiary is awarded damages for his/her injury resulting from the decedent’s death, the verdict form should allow the jury to enter separate amounts for each beneficiary on a single verdict form. A.R.S. §12-613; *Wilmot v. Wilmot*, 203 Ariz. 565, ¶¶ 22-23, 58 P.3d 507 (2002); *Nunez v. Nunez*, 25 Ariz. App. 558, 563, 545 P.2d 69, 73 (1976).

Form for use in wrongful death cases where more than one statutory beneficiary is claiming damages – add as many lines as are needed.

VERDICT FORM

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths and affirmations, find Plaintiffs' full damages to be

[Name] \$ _____.

[Name] \$ _____.

1. _____ (Initials)	_____ (Juror#)	5. _____ (Initials)	_____ (Juror #)
2. _____ (Initials)	_____ (Juror#)	6. _____ (Initials)	_____ (Juror #)
3. _____ (Initials)	_____ (Juror#)	7. _____ (Initials)	_____ (Juror #)
4. _____ (Initials)	_____ (Juror#)	_____ (Initials)	_____ (Juror #)

FOREPERSON

A separate form should be prepared for each plaintiff claiming damages.

VERDICT FORM

We, the Jury, duly empaneled and sworn in the above entitled action, upon our oaths and affirmations, find Plaintiff *[name]*'s full damages to be

\$ _____.

1. _____ (Initials)	_____ (Juror#)	5. _____ (Initials)	_____ (Juror #)
2. _____ (Initials)	_____ (Juror#)	6. _____ (Initials)	_____ (Juror #)
3. _____ (Initials)	_____ (Juror#)	7. _____ (Initials)	_____ (Juror #)
4. _____ (Initials)	_____ (Juror#)	_____ (Initials)	_____ (Juror #)

FOREPERSON

OTHER

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

	}			
	}			
	}		CV	}
Plaintiff	}			
	}		Joint Stipulation	
v.	}		Regarding Short Trial	
	}		Alternative to Arbitration	
	}			
Defendant	}			

Come now the parties, by and through their attorneys undersigned, and hereby enter into the following stipulation:

1. The parties agree to participate in a Short Trial in accordance with the procedures set forth in the stipulation.
2. The Uniform Rules of Procedure for Arbitration shall be applicable in regards to discovery, disclosure, and evidence.
3. There will be no record of the proceeding
4. Eight to ten potential jurors will be sent to the courtroom after being screened for potential conflicts with the parties and their representatives. Each side shall be allowed five minutes of voir dire, which time shall not be deducted from the two hours of presentation time. Each side shall make an equal number of strikes, bringing the jury panel to four members.

5. Each counsel shall be allowed two hours to present their case. Presentation includes opening statements, presentation of evidence, examination and cross-examination of witnesses and any other information to be presented to the jury.
6. Each side will be permitted to fairly summarize evidence or quote directly from depositions, sworn statements, interrogatories, requests for admissions, and documentary evidence.
7. The jury verdict shall be binding, and judgment shall be entered upon the jury's verdict, subject to any high/low agreement. The panel shall be made up of four jurors and the agreement of three jurors shall be necessary for a binding verdict.
8. Seven working days prior to the scheduled Short Trial, the parties shall submit a joint pre-trial memo to the assigned judge or judge pro-tem. The memo shall contain a brief statement of the nature of the claim and defense, a complete list of witnesses and a description of the substance of the testimony of each witness and a list of exhibits.
9. Standard Jury instructions will be taken from RAJI (Civil). Any additions to the jury instructions shall be stipulated to and included in the pre-trial memo.
10. Three working days prior to the scheduled Short Trial, the parties shall have a telephonic conference with the judge or judge pro-tem to discuss all matters needing attention prior to the trial date.
11. In the interest of time management parties may create booklets to include facts, photographs, diagrams, and other evidence to be presented to the jury.
12. Appellate relief shall be granted only upon a showing of fraud.
13. Attorney's fees and court costs shall be awarded according to statute and rules unless the parties stipulate otherwise. The parties stipulate as follows:

(Parties to stipulate prior to beginning trial)

Plaintiff's Counsel

Date

Defendant's Counsel

Date

SHORT TRIALS OUTLINE

By Dorothy Paine

Short Trials

- I. Short Trials
- II. What is a “Short Trial”
- III. Case Selection
 - A. “Short Trial” is not
 1. a full trial done faster
 2. arbitration in front of a lawyer
 - B. A Jury will decide
 - C. Two (2) hours to present
 1. Simple issues
 2. Limited number of witnesses
 3. Consider stipulating to issues
 - a. Damages in liability cases
 - b. Undisputed facts
 - c. Uncontested damages
 - D. Trust opposing counsel will abide by the rules
 1. If not, consider Judge Schwartz’s version
 - a. Do not waive appeal
 - b. Have a record

- E. Evidence: disputed evidence--either resolve before stipulation to do Short Trial or assume will be admitted.
 - F. Risk allocation
 - G. Personality
- IV. Initial Pre-trial Preparation
- A. ORGANIZE, ORGANIZE, ORGANIZE, ORGANIZE!!!!!!
 - B. Remember you probably have a judge *pro tempore*--you must do the court's preparation.
 - C. Theme of your case: select the issues you want to try, those you do not.
 - D. Plan use of your two (2) hours
 - 1. What evidence to be presented by attorney, what by witnesses
 - 2. Direct examination
 - 3. Cross examination
 - 4. Opening, closing, rebuttal
 - E. Identify who will testify live:
 - 1. Consider and select testimony to present by deposition, affidavit.
 - 2. Limit live testimony to those most important to the case
 - a. Key fact witnesses, people the jury needs to believe
 - b. Powerful personalities
 - c. People who need to connect with jury, i.e. personal injury plaintiffs
 - F. Identify exhibits that go to the jury
 - 1. Evidence that would be admitted without the shortened process

2. Summaries, graphs, charts
 - a. If you are a plaintiff have a summary of your damages broken down
 3. Communicate with opposing counsel early in the preparation, you must agree on exhibits or get ruling early, NOT the day before trial
- G. Select blow-ups and demonstrative exhibits, etc.
1. A picture is worth a thousand words, you will present a lot of information in a short time, make it easy for the jury to understand your position
 2. Blow ups to support the theme of your case
 3. Identify any charts, graphs, etc., that you want to use
 4. Order your exhibits early or you will pay a substantial rush fee
 5. Communicate with opposing counsel so you do not spend money for items you cannot use
- H. Agree on jury instructions
1. Focus on RAJIs
 - a. Someone else has done the work to make it easy for the jury
 - b. It will be easier for a *pro tem* judge
 2. Juries are instructed in the beginning of the trial not at the end
 3. Instructions must be in narrative form, ready to read to jury, and in notebook before the trial starts
- I. One (1) notebook with all exhibits. with clearly marked, easy to use tabs and table of contents
1. Prepare eight (8) notebooks: 4-jury, 1-judge, 1 each attorney, 1 for witness
 2. Plan exhibit presentation in notebooks --it must be logical to the jury

3. Decide who will assemble the notebooks, if you cannot agree or you are concerned they will be done correctly do them together or volunteer to do them yourself

V. The Short Trial

A. Be prepared

1. Know your case--witnesses will do less of the presentation for you
2. Know your exhibits and the notebook--you need to tell the jury what is in it and where to find the "good stuff"

B. Be organized in thought and action

C. Focus on your theme

D. Control your time--get to the point, make it, sit down

E. Be yourself