

LITIGATION



March 4, 2024

Via E-mail: civiljuryinstructions@jud.ca.gov

Mr. Eric Long
Advisory Committee on Civil Jury Instructions
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94102

re: Invitation to Comment—CACI 24-01

Dear Mr. Long:

The Jury Instructions Committee of the California Lawyers Association’s Litigation Section has reviewed the proposed revisions to civil jury instructions (CACI 24-01) and appreciates the opportunity to submit these comments.

1. CACI No. 372. Common Count: Open Book Account

Agree.

2. CACI No. 1009A. Liability to Employees of Indendent Contractors for Unsafe Concealed Conditions

Agree.

3. CACI No. 2500. Disparate Treatment—Essential Factual Elements

Agree.

4. CACI No. 2501. Affirmative Defense—Bona Fide Occupational Qualification

Agree.

5. **CACI No. 2502. Disparate Impact—Essential Factual Elements**
Agree.
6. **CACI No. 2513. Business Judgment for “At Will” Employment**
Agree.
7. **CACI No. 2521A. Work Environment Harassment—Conduct Directed at Plaintiff—Essential Factual Elements—Employer or Entity Defendant**
Agree.
8. **CACI No. 2521B. Work Environment Harassment—Conduct Directed at Others—Essential Factual Elements—Employer or Entity Defendant**
Agree.
9. **CACI No. 2521C. Work Environment Harassment—Sexual Favoritism—Essential Factual Elements—Employer or Entity Defendant**
Agree.
10. **CACI No. 2540. Disability Discrimination—Disparate Treatment—Essential Factual Elements**
Agree.
11. **CACI No. 2541. Disability Discrimination—Reasonable Accommodation—Essential Factual Elements**
Agree.
12. **CACI No. 2547. Disability-Based Associational Discrimination—Essential Factual Elements)**
Agree.
13. **CACI No. 2743. Pay Act—Retaliation—Essential Factual Elements**
Agree.
14. **CACI No. 3066. Bane Act—Essential Factual Elements**
Agree.

15. CACI No. 4000. Conservatorship—Essential Factual Elements

Agree.

16. CACI No. 4002. “Gravely Disabled” Explained

Agree.

17. CACI No. 4004. Issues Not to Be Considered

Agree.

18. CACI No. 4005. Obligation to Prove—Reasonable Doubt

Agree.

19. CACI No. 4006. Sufficiency of Indirect Circumstantial Evidence

Agree.

20. CACI No. 4007. Third Party Assistance

Agree.

21. CACI No. 4008. Third Party Assistance to Minor

Agree.

22. VF-4000. Conservatorship—Verdict Form

Agree.

23. CACI No. 4328. Affirmative Defense—Tenant Was Victim of Abuse or Violence

a. We agree with the revisions to the title and the first series of elements in the instruction.

b. We would modify element 2 in the second series of elements in the instruction to more closely parallel the language in element 3:

“2. That [*name of plaintiff*] gave [*name of defendant*] at least three days’ notice requiring [*him/her/nonbinary pronoun*] not to voluntarily permit or consent to the presence on the property of the person who committed the abuse or violence ~~back to the property~~; and”

c. The citation in the third paragraph of the Directions for Use to Code of Civil Procedure section 1161.3(a)(1)(A), (B), (C), (D) should be to section 1161.3(a)(2)(A), (B), (C), (D).

d. The revised instruction refers to a “qualified third party,” and the Directions for Use notes the statutory definition of “qualified third party.” Because there may be a factual dispute as to whether a third party was qualified, we suggest adding to the Directions for Use:

“If the parties dispute whether a third party is ‘qualified,’ consider giving a special instruction on the definition of ‘qualified third party.’ ”

e. The last paragraph of the Directions for Use states that the tenant has a “complete defense” if the tenant proves that the perpetrator is not a tenant of the same dwelling unit. We would modify this language to state that the defense is complete unless the landlord proves the exception stated in Code of Civil Procedure section 1161.3(b)(2)(B):

“The tenant has a complete defense to the unlawful detainer cause of action if the tenant proves that the perpetrator is not a tenant of the same ‘dwelling unit’ as the tenant, the tenant’s immediate family member, or household member- (~~S~~see Code Civ. Proc., § 1161.3(d)(1)), unless the landlord proves the exception (*id.*, § 1161.3(b)(2)(B)).”

24. CACI No. 5009. Predeliberation Instructions

Agree.

25. CACI No. 5012. Introduction to Special Verdict Form

Agree.

26. VF-300. Breach of Contract

Agree.

27. VF-400. Negligence—Single Defendant

Agree.

Sincerely,

Reuben A. Ginsburg
Chair, Jury Instructions Committee of the
California Lawyers Association’s
Litigation Section