

*San Francisco Daily Journal, 12/18/03.
Posted with permission of the Daily Journal.
This file cannot be downloaded from this page.*

Your Plain English Guide to the New Plain English Jury Instructions

*By Sara A. Fox, MLS,
Librarian, Severson & Werson, PC*

Adopted in July 2003 by the Judicial Council, the new "plain English" jury instructions, popularly known as CACI ("Kay-Cee"), will impact your library's collection. A few basics and some comparisons with BAJI:

Are the CACI instructions the official civil instructions in California?

Yes. CRC 855 states in part (emphasis added):

"The California jury instructions approved by the Judicial Council are the official instructions for use in the state of California. . . . Use of the Judicial Council instructions is strongly encouraged."

See also CRC 6.58, "Advisory Committee on Civil Jury Instructions"

(See http://www.courtinfo.ca.gov/juryciviljuryinstructions/rule_of_court.htm for the full text of Rules 855 and 6.58).

How many new instructions are there?

The Judicial Council has adopted appropriately 800 new instructions. You can tell that you are looking at a CACI instruction, and not a BAJI, because BAJI is numbered as a single digit with a decimal (1.10, 1.20) while CACI is numbered in a series' of 100 (100, 200).

Who is publishing CACI?

BAJI is a product of the LA Superior Court, published by West Group Publishing, which holds the copyright. CACI was the result of a Judicial Council task force and is being officially published by LexisNexis. A significant difference is that CACI is not copyrighted. LexisNexis acts as the Judicial Council's publisher of choice in this matter, however, any printer is free to propagate the instructions. As a result, CACI has been published in book and electronic form by LexisNexis, Westgroup, AccessLaw, and is even available COMPLETE and FREE on the California courts website at

<http://www.courtinfo.ca.gov/reference/documents/civiljuryinst.pdf>.

A few weeks ago I received a two-volume, blue covered set from LexisNexis and one volume, red covered book from West Group and both were claiming to be the new CACI instructions. What does this mean?

As stated above, currently both vendors are publishing the instructions, and what you noticed were differences in printing styles. LexisNexis choose to publish the instructions in two volumes, while Westgroup came up with a formatting scheme that allowed the instructions to be printed as a handy one volume. The content is identical (minus typographical and other printing errors), so either version will suit your needs. Choose the one that you like best.

Should I discard BAJI, 9th edition?

No! Well, I wouldn't. Rule 855(e) leaves room for the use of other instructions, as necessary and appropriate. "...[I]t is recommended that the judge use the Judicial Council instruction

unless he or she finds that a different instruction would more accurately state the law and be understood by jurors." Also, the lengthy appeals process in California virtually assures that litigators in your firm will be debating issues arising out of cases where BAJI was used for many years to come.

We have been using Westgroup's BAJI Jury Instruction Selector product to generate instructions and verdict forms. Will I need to switch to another product?

No. BAJI Jury Instruction Selector is currently a misnomer, as the latest update to Selector actually includes CACI. If you received this update and have loaded it, then simply open Selector and scroll down. After BAJI ends, the CACI instructions are listed. LexisNexis does have a competing product, using their Hot Docs template software. Hot Docs for jury instructions generates CACI forms only (Westgroup still holds the copyright to BAJI, remember). Do not confuse the software with the content. No matter which product you use, BAJI Selector or LexisNexis Hot Docs, you will be able to generate CACI instructions and verdict forms. Which software product you use to is up to you. I recommend evaluating both.

For more information about the new jury instructions and the software products mentioned here, see:

<http://www.courtinfo.ca.gov/jury/civiljuryinstructions/index.htm>

<http://west.thomson.com/> (search for CACI)

<http://www.lexisnexis.com/hotdocs/>

<http://bookstore.lexis.com/bookstore/catalog> (search for CACI)

<http://www.accesslaw.com/pdf/CACIOrder.pdf>

Copyright 2003 by Daily Journal. Reprinted with permission.