

**MINUTES OF
AD HOC COMMITTEE ON RULES OF EVIDENCE**

Friday, April 16, 2010

Arizona Courts Building

1501 W. Washington, Conference Room 109

Web Site: <http://www.azcourts.gov/rules/AdHocCommitteeonRulesofEvidence.aspx>

Members Present:

The Honorable Andrew Hurwitz, Chair

The Honorable Michael Miller

The Honorable Samuel Thumma

Mr. Timothy Eckstein

Mr. Carl Piccarreta

Mr. Milton Hathaway (by phone)

Ms. Patricia Refo

Members Not Present:

Mr. Paul Ahler

Prof. Dave Cole

Staff Present:

Ellen Crowley

Mark Armstrong

Quorum:

Yes

1. Call to Order--Justice Hurwitz

After welcoming committee members, Justice Hurwitz asked committee and staff members to introduce themselves. The following handouts were available for committee members:

- Agenda
- Side-by-Side Comparison of Arizona and Federal Rules of Evidence
- SB 1189, Amendments, Bill Status Overview, and House Fact Sheet (4/14/2010)
- *State v. Williams*, 209 Ariz. 228, 99 P.3d 43 (App. 2004) (discussing Rule 404)

Judge Miller announced that his law clerk had prepared a redline version of the rules that will be distributed to committee members.

2. Purpose of Committee--Justice Hurwitz

Justice Hurwitz discussed the purposes of the committee, which he described as follows:

- (1) Systematically comparing the Arizona and Federal Rules of Evidence, taking into account differences in the ways the rules were developed, and looking for “disconnects” between the two sets of rules. Justice Hurwitz later summarized this process as identifying differences in the language of the rules, identifying how and why the differences arose, and identifying differences in case law interpreting the rules.
- (2) Restyling the rules to make them more readable. Justice Hurwitz expressed a preference that the two sets of rules read the same unless there is a good reason for variation. Ms. Refo suggested a presumption to that effect. Justice Hurwitz suggested that we deal with this issue at the end of the process after the federal restyling is submitted to Congress.
- (3) Considering the need for a standing committee on the rules of evidence.

Justice Hurwitz also discussed his view of committee decision-making and stated that the end product likely would be a staff petition to amend the rules that reflects the committee’s views, both pro and con. He suggested that draft rules may go out for public comment, perhaps even public hearing, with the committee reconvening thereafter to finalize its work. Justice Hurwitz asked staff to supplement the side-by-side comparison with comments and notes indicating when and why amendments were made.

3. Work Plan and Subcommittee Assignments--Justice Hurwitz

Justice Hurwitz stated he would like to take up the rules in “batches,” with emphasis on rules that will require more attention, such as Rules 404 and 702. Review of the rules with the greatest differences will be undertaken by subcommittee, with each subcommittee having a chair. For the next meeting, the rules and assignments were broken down as follows:

Articles I - III, and Rules 401-403, 405-406, 409 and 411: These rules are tentatively considered non-controversial and will be reviewed by Justice Hurwitz, Patricia Refo and Mark Armstrong.

Rule 404 (including Federal Rules 412-415): Judge Thumma (Chair), Prof. Cole, Paul Ahler and Tim Eckstein

Rules 407-408: Patricia Refo (Chair), Milt Hathaway and Carl Piccarreta

Rule 410: Judge Miller (Chair), Paul Ahler and Tim Eckstein

The Committee agreed that subcommittee reports and/or drafts would be distributed to all committee members by Friday, May 14. Ms. Refo suggested that all future subcommittee assignments be decided at the next meeting.

4. Meeting Schedule--Justice Hurwitz

The committee firmed up the next meeting date of May 21 from 9:00 a.m. – 2:00 p.m., at which time the committee will review Articles I – IV as assigned above. Additionally, the following dates, times and articles for consideration were tentatively agreed to, subject to committee members checking their schedules:

June 18, 2010; 9:00 – 2:00 p.m.; Articles V - VI, and any unfinished rules from Article IV

August 20, 2010; 9:00 a.m. – 2:00 p.m.; Article VII or VIII

September 17, 2010; 9:00 a.m. – 2:00 p.m.; Article VIII or VII

October 15, 2010; 9:00 a.m. – 2:00 p.m.; Articles IX – XI

November 19, 2010; 9:00 a.m. – 2:00 p.m.; Restyling

December 17, 2010; 9:00 a.m. – 2:00 p.m.; Unfinished Business

5. Call to the Public--Judge Armstrong

A call to the public was made but there were no members of the public wishing to speak.

6. Next Meeting--Judge Armstrong

The next Committee meeting will be held on May 21, 2010, from 9:00 a.m. – 2:00 p.m., at the Arizona Courts Building, 1501 W. Washington, Phoenix, Arizona. The conference call number will be announced by e-mail to committee members.

7. Adjournment--Justice Hurwitz

Justice Hurwitz thanked the Committee for their commitment, and adjourned the meeting at 11:50 a.m.