

**MINUTES OF
ADVISORY COMMITTEE ON RULES OF EVIDENCE**

Friday, September 25, 2015

Arizona Courts Building

1501 W. Washington, Conference Room 230

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

Members Present:

The Honorable Samuel Thumma, Co- Chair
The Honorable Mark Armstrong (Ret.), Co-
Chair
Mr. Paul Ahler
Professor Dave Cole (via telephone)
Mr. Timothy Eckstein
The Honorable Wallace Hoggatt (via
telephone)
Mr. Milton Hathaway
Mr. William Klain
The Honorable Michael Miller (via
telephone)
Mr. Carl Piccarreta (via telephone)
Ms. Patricia Refo

Members Not Present:

The Honorable George Anagnost
Ms. Shirley McAuliffe
The Honorable Pamela Gates
The Honorable Paul Julien

Quorum:

Yes

1. Call to Order—Judge Thumma

Judge Thumma called the meeting to order at 10:00 a.m.

2. Approval of Minutes from Meeting of February 13, 2015—Judge Thumma

The minutes were approved by acclamation.

3. Future Meetings—Judges Thumma and Armstrong

Committee members agreed that the Committee should meet again in early March, mid-May and October, 2016. Judge Armstrong will arrange for electronic voting to select appropriate dates.

4. Rules Update (R-15-0001, R-15-0002, R-15-0010 & Comment)—Judges Armstrong and Thumma

Judges Armstrong and Thumma report on the amendments to Rule 3(D), Arizona Rules of Probate Procedure, Rule 2(B)(2), Arizona Rules of Family Law Procedure, and Rule 36(a), Arizona Rules of Protective Order Procedure, which were approved by the Supreme Court at its August Rules Agenda. The amendments will take effect January 1, 2016.

The Committee discussed the proper role of comments in rulemaking, and Judge Thumma suggested inviting CJ Bales to one of our meetings.

5. Ariz. R. Evid. 615 and 611(a)—Judge Thumma, Bill Klain and All

Judge Thumma reported that the Committee's suggested changes to the Bench Books have been incorporated therein. The proposed changes to the RAJIs and subpoena form are pending. Bill Klain will ask the civil rules restyling task force to consider amending Rule 45 accordingly.

Mr. Klain also reported on the ongoing work of the Task Force on the Arizona Rules of Civil Procedure, which has completed a preliminary draft. Mr. Klain further reported that certain of the rules, likely in the high 40's and predating the rules of evidence, contain evidentiary provisions. No substantive changes have been made to such rules and Mr. Klain does not believe they conflict with the rules of evidence. Trish Refo suggested that Mr. Klain ask Dan Capra to examine the evidentiary rules to help determine whether any conflicts exist or whether such evidentiary provisions should be incorporated into the rules of evidence. Mr. Klain advised that the formal petition is expected to be filed by January 10, 2016, to be followed by staggered comment periods. Judge Armstrong agreed to circulate the current draft to all Committee members. Individual comments are welcomed. Judge Armstrong will place this item on the agenda for the next meeting for consideration of a Committee comment.

Mr. Klain reported that a comparable criminal rule restyling effort is slated to begin in October.

6. Preliminary Draft of Proposed Amendments to the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence 803 and 902 (Public Hearings in Phoenix, AZ, on January 6, 2016, and in Washington, DC, on February 12, 2016) (Comment Period Ends February 16, 2016)—Trish Refo, Judge Armstrong and All

Judge Armstrong reported on the proposed abrogation of Federal Rule of Evidence 803(16), and the comments that have been filed thus far. He also reported on the proposed amendments of Federal Rules of Evidence 902(13) and 902(14). A subcommittee was created to consider the proposed amendments and any comments filed. The subcommittee will report back to the Committee at its next meeting and recommend whether comparable changes should be made to the Arizona Rules of Evidence. The subcommittee is composed of Trish Refo (chair), Paul Ahler, Paul Julien, and Carl Piccarreta.

7. Report on April 2015 Meeting of Federal Advisory Committee on Evidence Rules and Agenda Book--Trish Refo, Judge Armstrong and All

Judge Armstrong and Trish Refo discussed this meeting and agenda book. Of particular note, the federal Advisory Committee on Evidence Rules and Federal Judicial Conference will be collaborating on a best practices manual on authentication of electronic evidence. The agenda book also contains an updated version of Professor Capra's *Crawford* tome.

8. Focus on Forensic Evidence— Judges Armstrong and Thumma

Judges Thumma and Armstrong reported on work being done in the area of forensic evidence. Judge Armstrong noted that the Summer 2015 edition of the ABA Judges' Journal was devoted to the issue of "Forensic Sciences Judges as Gatekeepers," and that part of CJ Bales' strategic agenda looks to identifying new and enhanced training programs for judges regarding forensic science issues. The Committee engaged in a widespread discussion of the issue, and decided to create a subcommittee to examine ways the Committee may assist in carrying out the CJ's agenda. The subcommittee consists of Judge Miller (chair), Judge Hoggatt and Tim Eckstein, and will report back at the Committee's next meeting.

9. Other Items for Discussion/Congrats—Judges Armstrong and Thumma

Judge Armstrong congratulated Carl Piccarreta, Paul Julien, Dave Cole, Bill Klain and Tim Eckstein on their reappointments as Committee members for terms beginning July 1, 2015, and expiring on June 30, 2018. Judge Armstrong also congratulated the Committee presenters at the State Bar Convention for an excellent presentation. The presentation was very well received and all comments were positive. All presenters volunteered to reprise their presentation at next year's convention in Tucson.

Judge Thumma reported on other Committee-related presentations and encouraged Committee members to engage in presentations concerning the evidence rules and ongoing work of the Committee.

10 and 11. Call to the Public/Adjournment—Judge Thumma

Judge Thumma made a call to the public. No members of the public were present.

The meeting adjourned at approximately 11:40 a.m.