

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF EVIDENCE**

MEETING MINUTES

**Tuesday– October 23, 2018
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

<u>MEMBER PRESENT</u> Mr. Adam Alba Hon. Matthew Bates Ms. Deborah Bulkeley Ms. Tenielle Brown Ms. Nicole Salazar-Hall Mr. Mathew Hansen Mr. Ed Havas Mr. Chris Hogle Hon. Linda Jones Mr. John Lund Ms. Lacey Singleton Judge Vernice Trease Ms. Teresa Welch Mr. Dallas Young	<u>GUESTS PRESENT</u> William Haines, SWAP Ryan Peters, SWAP
<u>MEMBERS EXCUSED</u> Ms. Jacey Skinner Judge David Mortensen Mr. Terry Rooney Ms. Michalyn Steele	<u>STAFF PRESENT</u> Ms. Nancy Merrill Mr. Richard Schwermer Cathy Dupont

1. WELCOME AND APPROVAL OF MINUTES: (Mr. John Lund)

Mr. Lund welcomed everyone to the meeting.

Motion: Judge Jones moved to approve the minutes from the August 28, 2018 Evidence Advisory meeting. The motion was seconded the motion. The motion carried unanimously.

2. Proposed Amendment to Rule 804:

William Haines from the Attorney General's Office and Ryan Peters, Juab County Attorney presented a proposed amendment to Rule 804, Exceptions to the Rule Against Hearsay. Their proposal would remove the "similar motive" requirement for testimony in preliminary hearings with criminal cases, and keep the same standard in civil cases.

The Committee discussed the proposed change with Mr. Haines and Mr. Peters.

The Committee decided to put together a Subcommittee with the Committee for Rules of Criminal Procedure to study the proposed amendment to Rule 804 and preliminary hearings more broadly. Lacey Singleton, Adam Alba, Dallas Young, Matt Hansen and Judge Bates agreed to work on the Subcommittee. In addition, representatives from victim advocates will be asked to serve on the Subcommittee. The Subcommittee agreed to report on their progress at the next Evidence Advisory Committee meeting.

3. Report on Meeting with Supreme Court:

John Lund reported to the Committee that the Supreme Court approved Rule 617 for comment, the Committee Note for Rule 617, and the adoption of Rule 902. Mr. Schwermer noted that the Supreme Court made a note recognizing the excellent quality of the memo regarding Rule 902.

4. LPP Amendment Options:

Cathy Dupont and Adam Alba presented two proposed versions of a Rule 504 amendment to address LPPs. The Committee suggested moving the definition of Licensed Paralegal Practitioner to follow the definition of a lawyer. They agreed on the following language:

- Line 28 (6) "Legal Professional" means a lawyer and a licensed paralegal practitioner.
- Line 29, 30 (6) (a) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.
- Line 31-33 (6) (b) "Licensed Paralegal Practitioner" means a person authorized, or reasonably believed by the client to be authorized, by the Utah Supreme Court to provide legal representation under URGLPP Rule 15-701.
- Line 41 add end quotes after the word representative" and "p" in the title Legal professional's representative" should be lower case
- Line 28 (6) "p" in professional should be lower case

Ms. Dupont agreed to double check the punctuation and it consistent throughout the proposed draft of Rule 504.

- In addition, the Committee suggested that (10) read, "Licensed Paralegal Practitioner" means a person authorized to provide legal representation under URGLPP Rule 15-701, or reasonably believed by the client to be authorized to provide legal representation."
- Line 63 the first professional should read "professionals"

- Line 8 “Client’s representative”

Motion: *Chris Hogle made a motion to refer Cathy Dupont’s amended version of Rule 504 to the Supreme Court. Adam Alba seconded the motion. The motion passed unanimously.*

The Committee discussed the Committee Note and agreed on the following language, “The 2019 amendments expand the scope of the privilege to include Licensed Paralegal Practitioners as well as lawyers.”

Ms. Dupont agreed to make the changes to the rule and the note and circulate the changes to the Committee before it goes on the Supreme Court agenda.

5. Proposed Amendment to Rule 1101:

Judge Jones proposed a change to section (c) of Rule 1101. Judge Jones proposed striking (D) in order to address a conflict with the statute, and relettering the sections accordingly. The Committee discussed the proposed changes.

Motion: *Matt Hansen made a motion to strike (D) in section (c) change (E) to (D) and (F) to (E) of Rule 1101. Judge Bates seconded the motion. The motion passed.*

6. State vs Sanchez:

Teresa Welch reported on the interpretation of Rule 106 in footnote four of State v. Sanchez. Rule 106 causes a timing and a trumping function controversy. The case law across national jurisdiction is split on the issue. In State v. Sanchez the Court of Appeals decided in favor of the trumping function. The Utah Supreme Court vacated the Court of Appeals decision and asked the Rules Committee to address the controversy. , “The court also asked the Rules Committee to address whether Rule 106 applies to transcribed oral statements that are used extensively at trial but not actually introduced into evidence, in otherward, what are the necessary and significant conditions of introducing a recorded statement under rule 106.”

After further discussion, the Committee agreed to review the Court of Appeals decision on State vs Sanchez and familiarize themselves with the issue. Ms. Welch will circulate the appropriate materials to the Committee. The Committee will decide next steps at the January meeting.

7. Other Business:

Next Meeting:

January 8, 2019
5:15 p.m.
AOC, Council Room