

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

MEETING MINUTES

**Tuesday– January 8, 2019
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

<u>MEMBER PRESENT</u> Adam Alba Hon. Matthew Bates Deborah Bulkeley Mathew Hansen Chris Hogle John Lund Hon. David Mortensen Lacey Singleton Hon. Vernice Trease Teresa Welch Dallas Young Ed Havas	<u>GUESTS PRESENT</u> Representative Lowry Snow Patricia Owen, Legislative Research
<u>MEMBERS EXCUSED</u> Judge Jones Michalyn Steele Jacey Skinner Terry Rooney Nicole Salazar-Hall Tenielle Brown	<u>STAFF PRESENT</u> Cathy Dupont Nancy Merrill Richard Schwermer

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

Mr. Lund welcomed everyone to the meeting.

The following amendment was made to the minutes:

-Item 6 State vs Sanchez, add the following sentence at the end of paragraph 1, “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 other words, what are the necessary and significant conditions of introducing a recorded statement under rule 106.”

Motion: Including the amendment, there was a motion to approve the minutes from the Evidence Advisory Committee on October 23, 2018. The motion was seconded. The motion carried unanimously.

2. Victim Advocate Privilege:

Representative Lowry Snow reviewed background information on the victim advocate bill and the proposed Rule of Evidence. He informed the Evidence Advisory Committee that a legislative task force studied the victim advocate issue during the summer and fall interim period. After extensive research, the task force recommended HJR 3 and HB 53 which were included in the Committee materials.

Representative Snow communicated that the purpose of the proposed bill and the resolution is to create a privilege under the Rules of Evidence for the confidential communications between a victim who has been subject to violent crimes and the victim advocate who is providing services to the victim.

The Committee discussed the process for amending Rules of Evidence and asked Representative Snow questions about the proposed privilege. John Lund offered to revise the rule and bring it back to the Committee for further discussion at the February meeting. In addition, the Committee asked Representative Snow to come to the next meeting in February so that he can provide input to the Evidence Advisory Committee.

Motion: Judge Mortensen made a motion to work with Representative Snow to draft language for the proposed victim advocate rule. Judge Bates seconded the motion. The motion passed.

3. Review of Comments to Proposed Rule 617:

The Committee discussed the numerous comments to Rule 617 and agreed to review the comments, address the functionality issues and present the policy issues to the Supreme Court for their input.

Motion: Judge Mortensen moved for the Rule 617 Subcommittee to: review the comments; provide a brief summary of the policy objections and debate; identify any constructive suggestions for improvement to the rule; identify for the Committee, the functionality questions that the Evidence Advisory Committee did not address in their previous research of Rule 617; and consider adding to the comment to explain the intent of the rule, keeping in mind that the Supreme Court would like to keep comments brief. Adam Alba seconded the motion. The motion passed.

4. Rules 504 and 1101:

Cathy Dupont requested that the Committee review the drafts of Rule 504 and Rule 1101 before the rules go to the Supreme Court for approval.

- The Committee made the following correction to Rule 504: delete the language “in the state.” in the definitions section of the rule, at the end of line (5) (b).

Motion: Judge Mortensen made a motion to have Cathy Dupont send Rule 504, as edited, to the Supreme Court for approval. Chris Hogle seconded the motion. The motion passed.

- The Committee discussed Rule 1101 and made the following punctuality correction, in Subsection (3), replace the period with a colon after the word “proceedings.”

Motion: Judge Bates made a motion to approve Rule 1101, as edited, and to send it to the Supreme Court for approval. Chris Hogle seconded the motion. The motion passed.

5. State v. Sanchez Discussion:

Teresa Welch discussed her research on Rule 106 with the Committee. The two questions are whether the rule is a timing rule or a trumping rule, and the necessary and sufficient conditions of putting Rule 106 into play. The jurisdictions are split on the questions. Currently, there is case law for both sides. After further discussion about the meaning of Rule 106, the Committee agreed Rule 106 is a timing rule at minimum.

Motion: Judge Mortensen made a motion that Teresa Welch and Judge Mortensen will draft a short version of Rule 106 with a privilege backstop; to discuss at the next meeting and to present to the Supreme Court for their feedback. Dallas Young seconded the motion. The motion passed.

6. Other Business

The Committee agreed to discuss Rule 804 Subcommittee’s work at the next meeting.

John acknowledged Rick Schwermer’s work on the Committee and thanked him for his contributions.

Next Meeting:

February 5, 2018
5:15 p.m.
AOC, Council Room