

MEETING AGENDA

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

**Matheson Courthouse
450 South State Street
Council Room (N301)**

**August 28, 2018
5:15 p.m. to 6:45 p.m.**

Mr. John Lund, Presiding

Light dinner will be served

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

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1. Welcome & Approval of Minutes (6/19/18) (*attached*)..... John Lund

2. Review of Proposed Rule 617(*attached*).....Judge Jones et al.
3. LPP Amendment to Rule 504 (*attached*).....Rick Schwermer
4. Rule 902 Report.....Chris Hogle
5. Rule 1101 (*attached*).....Judge Jones
6. Letter from the Chief (*attached*).....John Lund
7. Other Business.....John Lund

TAB 1

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

MEETING MINUTES

**Tuesday – June 19, 2018
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

<u>MEMBER PRESENT</u> Tenielle Brown Deborah Bulkeley Nicole Salazar-Hall Mathew Hansen Ed Havas Chris Hogle John Lund Hon. David Mortensen Michalyn Steele Hon. Vernice Trease Teresa Welch Dallas Young Jacey Skinner	<u>GUESTS PRESENT</u>
<u>MEMBERS EXCUSED</u> Hon. Mathew Bates Hon. Linda Jones Terry Rooney Lacey Singleton	<u>STAFF PRESENT</u> Nancy Merrill Richard Schwermer

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

Mr. Lund welcomed everyone to the meeting.

Motion: *Teresa Welch moved to approve the minutes from the Evidence Advisory Committee meeting on February 13, 2018. Chris Hogle seconded the motion and the motion carried unanimously.*

2. Rule 617:

Mr. Lund reviewed the comments and suggestions received at the meeting with the Supreme Court on Rule 617. The following changes were suggested by the Supreme Court:

- Use the language “affected” in place of the language “impacted” throughout the rule.
- Address section (b) about admissibility in general and the broader set of issues that go into admissibility of evidence. It incorporates other aspects that go into the process of identification.
- The committee agreed subsection (c) will read:
If an identification procedure was administrated to the witness by law enforcement and the procedure is contested, the court must determine whether the identification procedure was unnecessarily suggestive or conducive to mistaken identification. If so, the eyewitness identification must be excluded, unless the court, considering the factors in subsections (b) and (c) finds that there is not a substantial likelihood of misidentification.

Motion: Ms. Teneille Brown made a motion to give Rule 617 to the subcommittee to review the proposed changes to subsections (b) and (c), then bring the rule back to the next meeting for the Committee to review. Teresa Welch seconded the motion. The motion passed unanimously.

3. Rule 504 Comment:

Mr. Schwermer explained that the Supreme Court approved the text of the Rule 504 and requested that the Committee review the amended Committee note included in the packet. He noted that the amendment to the Committee note lead to a broader discussion about whether going forward existing Advisory Committee notes should be amended and updated. The Committee had further discussion about Committee notes and the process for drafting them going forward.

Motion: Judge Mortensen moved to approve the Supreme Court’s Rule 504 Committee note proposal. Teresa Welch seconded the motion. The motion passed unanimously.

4. Rule 902 article:

The Committee discussed the article included in the meeting materials. They discussed whether this issue should be considered for adoption in Utah. The majority of the Committee agreed that we should consider amending the rule. There was some discussion about possible conformational clause problems with amending Rule 902. After further discussion, Mr. Hogle agreed to research the issue further and report back to the Committee at the next meeting. .

5. Licensed Paralegal Practioners- Implications for the Rules of Evidence

Mr. Schwermer updated the Committee on the concept of Licensed Paralegal Practioner, the scope of authority is defined the upcoming rules.

The charge for the Rule of Evidence Committee is to determine if there are any inclusions or

exclusions that need to be made to the rules. The following rules were discussed:

- 504
- 410
- 613
- 615

The Committee discussed how to review the rules and agreed that they should begin the work on editing the rules as group.

6. Other Business (Mr. John Lund)

The Committee discussed the following upcoming projects:

- 617
- 902 Project, Chris Hogle
- LLP project

Next Meeting:

August 28, 2018
5:15 p.m.
AOC, Council Room

TAB 2

Rule 617. Eyewitness Identification

(a) Definitions

- (1) **“Eyewitness Identification”** means witness testimony or conduct in a criminal trial that identifies the defendant as the person who committed a charged crime.
- (2) **“Identification Procedure”** means a lineup, photo array, or showup.
- (3) **“Lineup”** means a live presentation of multiple individuals, before an eyewitness, for the purpose of identifying or eliminating a suspect in a crime.
- (4) **“Photo Array”** means the process of showing photographs to an eyewitness for the purpose of identifying or eliminating a suspect in a crime.
- (5) **“Showup”** means the presentation of a single person to an eyewitness in a time frame and setting that is contemporaneous to the crime and is used to confirm or eliminate that person as the perceived perpetrator.

(b) Admissibility in General. In cases where eyewitness identification is contested, the court shall exclude the evidence if no factfinder, considering the factors in this subsection (b), could reasonably rely on the eyewitness identification. In making this determination, the court may consider expert testimony and other evidence on the following: ~~shall consider:~~

- (1) Whether the witness had an adequate opportunity to observe the suspect committing the crime;
- (2) Whether the witness’s level of attention to the suspect committing the crime was impaired because of a weapon or any other distraction;
- (3) Whether the witness had the capacity to observe the suspect committing the crime, including the physical and mental acuity to make the observation;
- (4) Whether the witness was aware a crime was taking place and whether that awareness ~~impacted~~ affected the witness’s ability to perceive, remember, and relate it correctly;
- (5) Whether a difference in race or ethnicity between the witness and suspect affected the identification;
- (6) The length of time that passed between the witness’s original observation and the time the witness identified the suspect;
- (7) Any instance in which the witness either identified or failed to identify the suspect and whether this remained consistent thereafter;

(8) Whether the witness was exposed to opinions, photographs, or any other information or influence that may have affected the independence of the witness in making the identification; and

(9) Whether any other aspect of the identification was shown to affect reliability.

(c) Identification Procedures. If an identification procedure was administered to the witness by law enforcement and the procedure is contested, the court must determine whether the identification procedure was unnecessarily suggestive or conducive to mistaken identification. If so, the eyewitness identification must be excluded unless the court finds that ~~-if-~~ considering the factors in subsection (b) and this subsection (c), there is not a substantial likelihood of misidentification.

(1) Photo Array or Lineup Procedures. To determine whether a photo array or lineup is unnecessarily suggestive or conducive to mistaken identification, the court should consider the following:

(A) Double Blind. Whether law enforcement used double blind procedures in organizing a lineup or photo array for the witness making the identification. If law enforcement did not use double blind procedures, the court should consider the degree to which the witness's identification was the product of another's verbal or physical cues.

(B) Instructions to Witness. Whether, at the beginning of the procedure, law enforcement provided instructions to the witness that

(i) the person who committed the crime may or may not be in the lineup or depicted in the photos;

(ii) it is as important to clear a person from suspicion as to identify a wrongdoer;

(iii) the person in the lineup or depicted in a photo may not appear exactly as he or she did on the date of the incident because features such as weight and head and facial hair may change; and

(iv) the investigation will continue regardless of whether an identification is made.

(C) Selecting Photos or Persons and Recording Procedures. Whether law enforcement selected persons or photos as follows:

(i) Law enforcement composed the photo array or lineup in a way to avoid making a suspect noticeably stand out, and it composed the photo array or lineup to include persons who match the witness's description of the perpetrator and who possess features and characteristics that are

reasonably similar to each other, such as gender, race, skin color, facial hair, age, and distinctive physical features;

(ii) Law enforcement composed the photo array or lineup to include the suspected perpetrator and at least five photo fillers or five additional persons;

(iii) Law enforcement presented individuals in the lineup or displayed photos in the array using the same or sufficiently similar process or formatting;

(iv) Law enforcement used computer generated arrays where possible; and

(v) Law enforcement recorded the lineup or photo array procedures.

(D) Documenting Witness Response. Whether law enforcement asked the witness how certain he or she was of any identification and documented all responses, including initial responses.

(E) Multiple Procedures or Witnesses. Whether or not law enforcement involved the witness in multiple identification procedures wherein the witness viewed the same suspect more than once and whether law enforcement conducted separate identification procedures for each witness, and the suspect was placed in different positions in each separate procedure.

(2) Showup Procedures. To determine whether a showup is unnecessarily suggestive or conducive to mistaken identification, the court should consider the following:

(A) Whether law enforcement documented the witness's description prior to the showup.

(B) Whether law enforcement conducted the showup at a neutral location as opposed to law enforcement headquarters or any other public safety building and whether the suspect was in a patrol car, handcuffed, or physically restrained by police officers.

(C) Whether law enforcement instructed the witness that the person may or may not be the suspect.

(D) Whether, if the showup was conducted with two or more witnesses, law enforcement took steps to ensure that the witnesses were not permitted to communicate with each other regarding the identification of the suspect.

(E) Whether the showup was reasonably necessary to establish probable cause.

(F) Whether law enforcement presented the same suspect to the witness more than once.

(G) Whether the suspect was required to wear clothing worn by the perpetrator or to conform his or her appearance in any way to the perpetrator.

(H) Whether the suspect was required to speak any words uttered by the perpetrator or perform any actions done by the perpetrator.

(I) Whether law enforcement suggested, by any words or actions, that the suspect is the perpetrator.

(J) Whether the witness demonstrated confidence in the identification immediately following the procedure and law enforcement recorded the confidence statement.

(3) Other Relevant Circumstances. In addition to the factors for the procedures described in parts (1) and (2) of this subsection (c), the court may evaluate an identification procedure using any other circumstance that the court determines is relevant.

(d) Admissibility of Photographs. Photographs used in an identification procedure may be admitted in evidence if:

(1) the prosecution has demonstrated a reasonable need for the use;

(2) the photographs are offered in a form that does not imply a prior criminal record; and

(3) the manner of their introduction does not call attention to their source.

(e) Expert Testimony. When the court admits eyewitness identification evidence, it may also receive related expert testimony upon request.

(f) Jury Instruction. When the court admits eyewitness identification evidence, the court may, and shall if requested, instruct the jury consistent with the factors in subsections (b) and (c) and other relevant considerations.

Committee Note: This rule ensures that when called upon, a trial court will perform a gatekeeping function and will exclude unreliable eyewitness identification evidence in a criminal case. Several organizations, including the Department of Justice and the ABA, have published best practices for eyewitness identification procedures when a witness is asked to identify a perpetrator who is a stranger to the witness.

Subsection (a) defines terms commonly used in the eyewitness identification process.

Subsection (b) addresses estimator variables (circumstances at the time of the crime). According to the National Research Council of the National Academies, the most-studied estimator variables include: weapon focus, stress and fear, race bias, exposure, duration, and retention. The literature talks about how stress, fear, and anxiety may affect memory storage and retrieval. The ABA recognizes that high and low levels of stress may harm performance in identifying suspects, while moderate levels may enhance memory performance. A stressed victim may encode information differently and be more affected by stress than a passerby, unless the passerby is unaware that a crime is taking place. In addition, the cross-race effect will depend on the circumstances; and the participation of law enforcement and others may influence a witness's perceptions and memory retrieval. Expert evidence may be necessary to elucidate these factors for the court, and where the evidence is admissible, expert evidence and/or an instruction may further elaborate on the factors for the jury.

Subsection (c)(1) reflects some of the best practices in the context of photo array and lineup procedures, including use of double blind procedures; providing instructions to the witness at the beginning of the procedure; displaying photos or presenting a lineup with individuals who generally fit the witness's description of the suspect and who are sufficiently similar so as not to suggest the suspect to the witness; documenting the procedures, including the witness's responses; and guarding against influencing the witness through use of multiple procedures or when multiple witnesses are involved.

Use of double blind procedures. The literature, including the National Academies of Science report, supports that whenever practical, the person who conducts a lineup or organizes a photo array and all those present (except defense counsel) should be unaware of which person is the suspect through use of double blind procedures. Use of double blind procedures provides assurance that an administrator who is not involved in the investigation does not know what the suspect looks like and is therefore less likely to suggest or confirm that the perpetrator is in the lineup or the photo array. At times, double blind procedures may not be practical. In such cases, the administrator should adopt blinded procedures, such as a "folder shuffle," to prevent him or her from knowing which photo a witness is viewing at a given time and to ensure that he or she cannot see the order or arrangement of the photographs viewed by the witness. Blinded procedures may be necessary to use in smaller agencies with limited resources or in high profile cases where all officers are aware of the suspect's identity. As a practical matter, blinded procedures work only for photo arrays and are not recommended for use in lineups. Lineups must be conducted using double blind procedures.

Providing instructions to the witness. The person conducting the lineup or photo array should not disclose or convey to the witness that a suspect is in custody. Rather, the person should read instructions to the witness that are neutral and detached and should allow the witness to ask questions about the instructions before the process begins. The witness should sign and date the instructions. Organizations have published instructions for use in lineup or photo array procedures that may be used by agencies. While a witness is viewing the photo array, the person conducting the procedure should not interrupt the witness or interject.

Displaying photos or presenting a lineup. In selecting fillers or individuals for the photo array or lineup procedure, at least five fillers—or non-suspects—should be used with the suspect photo. Fillers should generally fit the witness’s description of the perpetrator as opposed to match a specific suspect’s appearance. Fillers should not make the suspect noticeably stand out. Photos should be of similar size with similar background and formatting. They should be numbered sequentially or labeled in a manner that does not reveal identity or the source of the photo, and they should contain no other writing. More recent literature supports that where practical, agencies should employ a simultaneous procedure, which allows the witness to observe at one time all of the photos in an array for a single suspect.

Documenting witness responses. Law enforcement should clearly document by video or audio recording a witness’s level of confidence verbatim at the time of an initial identification. New research shows that a witness’s confidence at the time of an initial identification is a good indicator of accuracy. A recording will ensure that investigators and fact-finders fully understand a witness’s level of confidence.

Multiple procedures and multiple witnesses. According to the literature, multiple identification procedures create a “commitment effect” in which the witness might recognize a lineup member or photo from a previous procedure, rather than from the crime scene. In addition, when multiple witnesses are involved, a procedure that ensures the suspect is not in the same position for each procedure guards against witnesses influencing one another.

Subsection (c)(2) addresses showup procedures. While several organizations discourage showup procedures as inherently suggestive, the procedures may be necessary to law enforcement in assessing eyewitness identification. In that regard, the International Association of Chiefs of Police (IACP) and other organizations recommend that witnesses should not be shown suspects while they are in suggestive settings such as a patrol car, handcuffs, or other physical restraints. Such settings can lead to a prejudicial inference by the witness. Notwithstanding the suggestive nature of showups, subsection (c)(2) addresses factors to consider in those circumstances. Once law enforcement has probable cause to arrest a suspect, however, a witness should not be allowed to participate in showup proceedings but should participate only in lineup or photo array procedures. Also, a judge should consider a witness’s own words immediately after a showup procedure when assessing the witness’s confidence level, as opposed to law enforcement’s assessment that a witness “was confident.”

Subsection (c)(3) addresses other factors that may be relevant to the analysis. Those factors may include whether there was no unreasonable delay between the events in question and the identification procedures, among other things.

Subsection (d) addresses the use of photographs at trial that were used by law enforcement in identification procedures.

Subsections (e) and (f) are included because the National Academies of Science (NAS) report recommends both expert testimony and jury instructions due to the fact that many scientifically established aspects of eyewitness identification memory are counterintuitive and jurors will need assistance in understanding the factors that may affect the accuracy of an identification. The jury should be instructed on both estimator variables (circumstances at the time of the crime) and system variables (procedures) that have an effect on witness identification.

Sources: National Academies of Science, *Identifying the Culprit: Assessing Eyewitness Identification* (2014), available at <https://www.nap.edu/catalog/18891/identifying-the-culprit-assessing-eyewitness-identification>; U.S. D.O.J., *Eyewitness Identification: Procedures for Conducting Photo Arrays* (2017); ABA Statement of Best Practices for Promoting the Accuracy of Eyewitness Identification Procedures (2004); IACP National Law Enforcement Policy Center, *Eyewitness Identification: Model Policy* (2010).

TAB 3

Rule 504. Lawyer - Client.

(a) Definitions.

- (1) "Client" means a person, public officer, corporation, association, or other organization or entity, either public or private, who is rendered legal services by a lawyer or who consults a lawyer or a lawyer referral service to obtain legal services.
- (2) "Lawyer" means:
 - (A) a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation, or
 - (B) a licensed paralegal practitioner as defined in URGLPP Rule 15-701 acting within the scope of their licensure.
- (3) "Lawyer referral service" means an organization, either non-profit or for-profit that is providing intake or screening services to clients or prospective clients for the purpose of referring them to legal services.
- (4) "Legal services" means the provision by a lawyer or lawyer referral service of:
 - (A) professional counsel, advice, direction or guidance on a legal matter or question;
 - (B) professional representation on the client's behalf on a legal matter;or
 - (C) referral to a lawyer.
- (5) "Lawyer's representative" means a person or entity employed to assist the lawyer in the rendition of legal services.
- (6) "Client's representative" means a person or entity authorized by the client to:
 - (A) obtain legal services for or on behalf of the client;
 - (B) act on advice rendered pursuant to legal services for or on behalf of the client;
 - (C) provide assistance to the client that is reasonably necessary to facilitate the client's confidential communications; or
 - (D) disclose, as an employee or agent of the client, confidential information concerning a legal matter to the lawyer.

(7) "Communication" includes:

(A) advice, direction or guidance given by the lawyer, the lawyer's representative or a lawyer referral service in the course of providing legal services; and

(B) disclosures of the client and the client's representative to the lawyer, the lawyer's representative or a lawyer referral service incidental to the client's legal services.

(8) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of legal services to the client or to those reasonably necessary for the transmission of the communication.

(b) Statement of the Privilege. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications if:

(1) the communications were made for the purpose or in the course of obtaining or facilitating the rendition of legal services to the client; and

(2) the communications were:

(A) between (i) the client or the client's representative and (ii) the lawyer, the lawyer's representatives, or a lawyer representing others in matters of common interest;

(B) between clients or clients' representatives as to matters of common interest but only if each clients' lawyer or lawyer's representatives was also present or included in the communications;

(C) between (i) the client or the client's representatives and (ii) a lawyer referral service; or

(D) between (i) the client's lawyer or lawyer's representatives and (ii) the client's lawyer referral service.

(c) Who May Claim the Privilege. The privilege may be claimed by:

(1) the client;

(2) the client's guardian or conservator;

(3) the personal representative of a client who is deceased;

- (4) the successor, trustee, or similar representative of a client that was a corporation, association, or other organization, whether or not in existence; and
- (5) the lawyer or the lawyer referral service on behalf of the client.

(d) Exceptions to the Privilege. Privilege does not apply in the following circumstances:

- (1) Furtherance of the Crime or Fraud. If the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;
- (2) Claimants through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;
- (3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer to the client;
- (4) Document Attested by Lawyer. As to a communication relevant to an issue concerning a document to which the lawyer was an attesting witness; or
- (5) Joint Clients. As to the communication relevant to a matter of common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in an action between any of the clients.

2018 Advisory Committee Note: These amendments are limited to the scope of the attorney-client privilege. Nothing in the amendments is intended to suggest that for other purposes, such as application of the Utah Rules of Professional Conduct or principles of attorney liability, an attorney forms an attorney-client relationship with a person merely by making a referral to another lawyer, even if privileged confidential communications are made in the process of that referral.

Effective November 1, 2018.

TAB 5

Effective 5/8/2018

78B-7-106 Protective orders -- Ex parte protective orders -- Modification of orders -- Service of process -- Duties of the court.

- (1) If it appears from a petition for an order for protection or a petition to modify an order for protection that domestic violence or abuse has occurred, that there is a substantial likelihood domestic violence or abuse will occur, or that a modification of an order for protection is required, a court may:
 - (a) without notice, immediately issue an order for protection ex parte or modify an order for protection ex parte as it considers necessary to protect the petitioner and all parties named to be protected in the petition; or
 - (b) upon notice, issue an order for protection or modify an order after a hearing, regardless of whether the respondent appears.
- (2) A court may grant the following relief without notice in an order for protection or a modification issued ex parte:
 - (a) enjoin the respondent from threatening to commit domestic violence or abuse, committing domestic violence or abuse, or harassing the petitioner or any designated family or household member;
 - (b) prohibit the respondent from telephoning, contacting, or otherwise communicating with the petitioner or any designated family or household member, directly or indirectly, with the exception of any parent-time provisions in the ex parte order;
 - (c) subject to Subsection (2)(e), prohibit the respondent from being within a specified distance of the petitioner;
 - (d) subject to Subsection (2)(e), order that the respondent is excluded from and is to stay away from the following places and their premises:
 - (i) the petitioner's residence or any designated family or household member's residence;
 - (ii) the petitioner's school or any designated family or household member's school;
 - (iii) the petitioner's or any designated family or household member's place of employment;
 - (iv) the petitioner's place of worship or any designated family or household member's place of worship; or
 - (v) any specified place frequented by the petitioner or any designated family or household member;
 - (e) if the petitioner or designated family or household member attends the same school as the respondent, is employed at the same place of employment as the respondent, or attends the same place of worship, the court:
 - (i) may not enter an order under Subsection (2)(c) or (d) that excludes the respondent from the respondent's school, place of employment, or place of worship; and
 - (ii) may enter an order governing the respondent's conduct at the respondent's school, place of employment, or place of worship;
 - (f) upon finding that the respondent's use or possession of a weapon may pose a serious threat of harm to the petitioner, prohibit the respondent from purchasing, using, or possessing a firearm or other weapon specified by the court;
 - (g) order possession and use of an automobile and other essential personal effects, and direct the appropriate law enforcement officer to accompany the petitioner to the residence of the parties to ensure that the petitioner is safely restored to possession of the residence, automobile, and other essential personal effects, or to supervise the petitioner's or respondent's removal of personal belongings;
 - (h) order the respondent to maintain an existing wireless telephone contract or account;

- (i) grant to the petitioner or someone other than the respondent temporary custody of a minor child of the parties;
 - (j) order the appointment of an attorney guardian ad litem under Sections 78A-2-703 and 78A-6-902;
 - (k) order any further relief that the court considers necessary to provide for the safety and welfare of the petitioner and any designated family or household member; and
 - (l) if the petition requests child support or spousal support, at the hearing on the petition order both parties to provide verification of current income, including year-to-date pay stubs or employer statements of year-to-date or other period of earnings, as specified by the court, and complete copies of tax returns from at least the most recent year.
- (3) A court may grant the following relief in an order for protection or a modification of an order after notice and hearing, regardless of whether the respondent appears:
- (a) grant the relief described in Subsection (2); and
 - (b) specify arrangements for parent-time of any minor child by the respondent and require supervision of that parent-time by a third party or deny parent-time if necessary to protect the safety of the petitioner or child.
- (4) In addition to the relief granted under Subsection (3), the court may order the transfer of a wireless telephone number in accordance with Section 77-36-5.3.
- (5) Following the protective order hearing, the court shall:
- (a) as soon as possible, deliver the order to the county sheriff for service of process;
 - (b) make reasonable efforts to ensure that the order for protection is understood by the petitioner, and the respondent, if present;
 - (c) transmit electronically, by the end of the next business day after the order is issued, a copy of the order for protection to the local law enforcement agency or agencies designated by the petitioner; and
 - (d) transmit a copy of the order to the statewide domestic violence network described in Section 78B-7-113.
- (6)
- (a) Each protective order shall include two separate portions, one for provisions, the violation of which are criminal offenses, and one for provisions, the violation of which are civil violations, as follows:
 - (i) criminal offenses are those under Subsections (2)(a) through (e), and under Subsection (3) (a) as it refers to Subsections (2)(a) through (e); and
 - (ii) civil offenses are those under Subsections (2)(f), (h), and (i), and Subsection (3)(a) as it refers to Subsections (2)(f), (h), and (i).
 - (b) The criminal provision portion shall include a statement that violation of any criminal provision is a class A misdemeanor.
 - (c) The civil provision portion shall include a notice that violation of or failure to comply with a civil provision is subject to contempt proceedings.
- (7) The protective order shall include:
- (a) a designation of a specific date, determined by the court, when the civil portion of the protective order either expires or is scheduled for review by the court, which date may not exceed 150 days after the date the order is issued, unless the court indicates on the record the reason for setting a date beyond 150 days;
 - (b) information the petitioner is able to provide to facilitate identification of the respondent, such as social security number, driver license number, date of birth, address, telephone number, and physical description; and
 - (c) a statement advising the petitioner that:

- (i) after two years from the date of issuance of the protective order, a hearing may be held to dismiss the criminal portion of the protective order;
 - (ii) the petitioner should, within the 30 days prior to the end of the two-year period, advise the court of the petitioner's current address for notice of any hearing; and
 - (iii) the address provided by the petitioner will not be made available to the respondent.
- (8) Child support and spouse support orders issued as part of a protective order are subject to mandatory income withholding under Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Title 62A, Chapter 11, Part 5, Income Withholding in Non IV-D Cases, except when the protective order is issued ex parte.
- (9)
- (a) The county sheriff that receives the order from the court, pursuant to Subsection (6)(a), shall provide expedited service for orders for protection issued in accordance with this chapter, and shall transmit verification of service of process, when the order has been served, to the statewide domestic violence network described in Section 78B-7-113.
 - (b) This section does not prohibit any law enforcement agency from providing service of process if that law enforcement agency:
 - (i) has contact with the respondent and service by that law enforcement agency is possible; or
 - (ii) determines that under the circumstances, providing service of process on the respondent is in the best interests of the petitioner.
- (10)
- (a) When an order is served on a respondent in a jail or other holding facility, the law enforcement agency managing the facility shall make a reasonable effort to provide notice to the petitioner at the time the respondent is released from incarceration.
 - (b) Notification of the petitioner shall consist of a good faith reasonable effort to provide notification, including mailing a copy of the notification to the last-known address of the victim.
- (11) A court may modify or vacate an order of protection or any provisions in the order after notice and hearing, except that the criminal provisions of a protective order may not be vacated within two years of issuance unless the petitioner:
- (a) is personally served with notice of the hearing as provided in Rules 4 and 5, Utah Rules of Civil Procedure, and the petitioner personally appears, in person or through court video conferencing, before the court and gives specific consent to the vacation of the criminal provisions of the protective order; or
 - (b) submits a verified affidavit, stating agreement to the vacation of the criminal provisions of the protective order.
- (12) A protective order may be modified without a showing of substantial and material change in circumstances.
- (13) Insofar as the provisions of this chapter are more specific than the Utah Rules of Civil Procedure, regarding protective orders, the provisions of this chapter govern.

Amended by Chapter 124, 2018 General Session

Amended by Chapter 255, 2018 General Session

TAB 6



Catherine J. Dupont
Appellate Court Administrator

Nicole J. Gray
Clerk of Court

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone 801-578-3900
Email: supremecourt@utcourts.gov

Matthew B. Durrant	Chief Justice
Thomas R. Lee	Associate Chief Justice
Deno S. Himonas	Justice
John A. Pearce	Justice
Paige Petersen	Justice

June 27, 2018

Dear Advisory Committee Chairs,

We are contacting each Supreme Court advisory committee to inform you of two initiatives we are requesting each advisory committee to undertake.

Our first request concerns our efforts to try to make the judicial system more accessible to unrepresented individuals who often find our rules and processes confusing and daunting. In the course of reviewing your committee's rules and proposed amendments, we want to challenge your committee to consider the impact of the rule on the unrepresented party and whether there is a simpler process or clearer language that can be recommended. When you submit a proposed rule or amendment to the Court for approval, we are interested in hearing from you about your consideration of how the rule may impact the unrepresented party. We acknowledge that this additional inquiry creates work for the committee, however, we believe that the goal of improving access to the courts is compelling.

Our second initiative concerns a change to the Advisory Committee Notes published with the rules. We request that each advisory committee review their Advisory Committee Notes to determine the following:

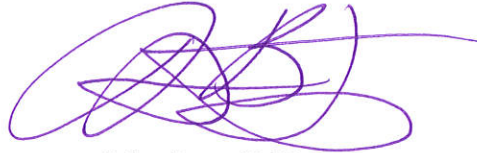
- Are the advisory notes accurate based on existing case law? Should an advisory note be eliminated or revised based on case law or other reasons?
- Does the advisory note explain the intent of the rule? If so, can the language of the rule be clarified so that a note regarding intent is not necessary?
- Does the advisory note provide historical context for the rule or an example that explains the application of the rule? If not, what is the purpose of the advisory note?

We recognize that each advisory committee is working on many projects and there are limited resources for undertaking the evaluation of advisory committee notes.

Please discuss this project with your committee and create a plan for the evaluation that works for your committee, and then report back to us regarding the committee's plan.

Finally, we want to express our gratitude to the advisory committee members for the hours of dedicated work provided by them to the courts.

Respectfully,

A handwritten signature in purple ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Matthew B. Durrant
Chief Justice