

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

**MEETING MINUTES**

**Tuesday – January 9, 2018  
5:15 p.m.  
Council Room**

*Mr. John Lund, Presiding*

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

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

Mr. Lund welcomed everyone to the meeting; he also welcomed Cathy Dupont, Appellate Court Administrator for the Court.

The following amendments were made to the minutes:

-include Jacey Skinner and Judge Trease to **MEMBERS EXCUSED**

-Item 2 the last bullet point should read “making inadmissible”

-Item 2 the second bullet point edit the word “elusive” to read “exclusive”

***Motion:*** Judge Mortensen moved to approve the amended minutes from the Evidence Advisory meeting held on November 14, 2017. Judge Bates seconded the motion. The motion carried unanimously.

## **2. Report on meeting with the Supreme Court:**

Mr. Schwermer passed around the current draft of Rule 504 and Committee note to the Committee for discussion. The Committee discussed the drafts and suggested the following: (6)(C) amend the word “provides” to read “provide”

The Committee addressed Rule 617 and suggested the following:

- **(b) Admissibility in General.** “In cases where eyewitness identification is contested, the court shall exclude the evidence if no fact finder, considering the factors in this subsection (b), could reasonably rely on the eyewitness identification.”

-**(c) Identification Procedures.** The Committee discussed the language “clear and convincing evidence.” After further discussion they agreed to recommend the wording “unless the court determines that the indicia of reliability substantially outweigh the danger of a mistaken identification”

- **(e) Expert Testimony.**

The Committee agreed to add an additional subsection **(f) Jury Instruction.** The language would read, “when the court admits eyewitness identification evidence, the court may, and shall when requested, instruct the jury consistent with the factors outlined in (B)”

Mr. Lund noted that the Committee agreed to address the Committee Note after the Supreme Court reviews the proposed rule.

***Motion:*** Judge Bates moved to recommend the revised rule to the court including changes to sections (b), (c) and new (f). The motion was seconded. The motion passed, Dallas Young voted no as he is opposed to the term “reliable” in the rule.

## **3. First Responder Privilege:**

Judge Bates reported about the work that the subcommittee has done so far on Rule 506. The Committee discussed the proposed draft and how to approach addressing a first responder privilege. After further discussion the Evidence Advisory Committee agreed to draft a stand-alone rule. The subcommittee agreed to meet in the next week to redraft the proposed rule.

***Motion:*** Adam Alba moved to support in concept the draft in progress as a stand-alone Rule 507 consistent with the proposed bill and rules of privilege. Nicole Salazar-Hall seconded the

*motion. The motion passed unanimously.*

**4. Other Business:**

The Committee agreed to hold the next Evidence Advisory Committee meeting on February 13, 2018

**Next Meeting:** February 13, 2018  
5:15 p.m.  
AOC, Council Room