

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

MEETING MINUTES

**Tuesday – April 18, 2017
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

MEMBERS PRESENT

Mr. John R. Lund, Chair
Hon. Mathew D. Bates
Ms. Deborah Bulkeley
Mr. Ed Havas
Mr. Matthew Hansen
Mr. Christopher Hogle
Ms. Linda Jones
Hon. Keith A. Kelly
Hon. David Mortensen
Mr. Terry Rooney
Ms. Jacey Skinner
Ms. Lacey Singleton
Ms. Michalyn Steele
Hon. Vernice Trease
Ms. Teresa Welch

MEMBERS EXCUSED

Mr. Adam Alba
Ms. Teneille Brown

GUESTS PRESENT

Ms. Jensie Anderson
Mr. Will Carlson (SWAP)

STAFF PRESENT

Ms. Nancy Merrill
Mr. Richard Schwermer

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

Mr. Lund welcomed everyone to the meeting. He congratulated Mr. Schwermer on his appointment as State Court Administrator.

Motion: Ms. Linda Jones moved to approve the minutes from the Evidence Advisory Committee meeting on February 21, 2017. Judge Keith Kelly seconded the motion. The motion carried unanimously.

2. Eyewitness Identification Rule Draft Discussion: *(attached)* (Ms. Linda Jones & Guests)

Mr. Lund began by discussing the background of the eyewitness identification issue. He noted that the subcommittee working on the eyewitness identification issue and the proposed rule is a joint subcommittee with the Evidence Advisory Committee and Rules of Criminal Procedure Committee. Currently the subcommittee is working on two options for a rule, a more specific version and a broader version. The Supreme Court has indicated that they are in favor of a more specific version and suggested the subcommittee to move forward in that direction.

Ms. Jencie Anderson, Legal Director of the Rocky Mountain Innocence Center, discussed various reasons for wrongful convictions, including eyewitness identification. She noted one main goal of the Innocence Center is to strengthen eyewitness identification by implementing the following four best practices to reduce the risk of wrongful eyewitness identification:

- **Blinded Array**- the officer conducting the identification is unaware of the suspect's identity.
- **Witness instructions**- that the perpetrator may or may not be present and the investigation will continue regardless of whether identification is made
- **Similar fillers**- use fillers that generally match the witness's description of the perpetrator and that do not make the suspect stand out.
- **Elicit a witness statement immediately after the identification takes place**

Ms. Anderson noted that currently nineteen states have adopted the four best practices through court action, statute, or voluntary implementation and most law enforcement agencies are using these practices as well. The Committee had further discussion with Ms. Anderson about eyewitness identification and the factors that makes eyewitness identification admissible vs. inadmissible. The Committee had further discussion about possible ways to edit the proposed rule.

Mr. Carlson from SWAP addressed the following concerns with the proposed rule:

- The proposed rule is more substantive and policy –like than other Rules of Evidence in Utah
- The proposed eyewitness identification rule could interfere with admissibility of information that appropriately should go to a jury

The Committee had further discussion about the language in the proposed rule and the direction to proceed with the rule for the subcommittee. They agreed that the rule would be included in the 400 series of the existing rules.

Ms. Jones and the eyewitness subcommittee are meeting on April 26th and will consider the discussion from the current meeting and redraft the rule.

3. Rule 1102: (Input and discussion) (Mr. John Lund & Guests)

Mr. Lund began the discussion by reviewing Ms. Zimmerman's view on the issue of reliable

hearsay that the Committee heard at the last meeting. Mr. Lund distributed a written comment on the issue to the Committee. The Committee discussed the reliability of evidence in relation to when it is reported. The proposed change is to take out the word “promptly” in the current Rule 1102(7). Ms. Singleton agreed to do more research on whether there is credible information available that demonstrates that prompt reporting makes the evidence more reliable or not and report back to the Committee at the next meeting. The Committee will address the issue as an action item at the next meeting.

Motion: Judge David Mortensen made a motion to table this issue and have it be an action item at the next meeting. Ms. Lacey Singleton seconded the motion. The motion passed unanimously.

4. Rule 504 (Time Permitting):

The Committee agreed to address Rule 504 at the next meeting.

6. Other Business: (Mr. John Lund)

The Committee scheduled the next meeting.

Next Meeting:

May 16, 2017
5:15 p.m.
AOC, Council Room