

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

**MEETING MINUTES**

**Tuesday– August 29, 2017  
5:15 p.m.  
Council Room**

***Mr. John Lund, Presiding***

**MEMBERS PRESENT**

Ms. Teneille Brown  
Hon. Matthew D. Bates  
Mr. Christopher R. Hogle  
Ms. Teresa Welch  
Hon. Keith A. Kelly  
Mr. John R. Lund  
Mr. Terence Rooney  
Hon. David Mortensen  
Ms. Lacey Singleton  
Mr. Matthew Hansen  
Mr. Ed Havas  
Hon. Vernice Trease  
Mr. Adam Alba  
Ms. Deborah Bulkeley

**GUESTS PRESENT**

**MEMBERS EXCUSED**

Ms. Michalyn Steele  
Ms. Linda Jones  
Ms. Jacey Skinner

**STAFF PRESENT**

Mr. Richard Schwermer

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

Mr. Lund welcomed everyone to the meeting.

The following correction was made to the minutes:

- Include Mr. Matthew Hansen in members excused in the June 27, 2017 Evidence Advisory Committee meeting minutes.

***Motion:*** Judge Havas moved to approve the minutes from the June 27, 2017 Evidence Advisory Committee meeting. The motion was seconded. The motion carried unanimously.

## **2. Eyewitness Identification Rule (*attached*) (Linda Jones, et al.)**

Ms. Welch reported on behalf of the Eyewitness Identification Rule subcommittee. The Committee discussed the role of suggestibility in the proposed rule. They agreed that the rule should be written so that it is consistent with existing case law. They discussed the possibility of providing optional language vetted by the Evidence Advisory Committee to the Court that considers an alternative standard. The Committee had further discussion about the direction of the Eyewitness Identification Rule assignment and they suggested the following edits to the draft rule:

- **(b) Admissibility of Eyewitness Testimony.** “An eyewitness’s identification of the defendant as the person who committed the charged crimes(s) shall be excluded at the criminal trial if the court determines that the identification procedure was unnecessarily suggestive or conducive to the mistaken identification.”
- **(1) Photo Array or Lineup Procedures.** Remove the brackets on line two and use the suggested language.
- **(d) Jury Instruction and Expert Testimony.** Remove the brackets and strike the second sentence.

The Committee agreed to draft the discussed changes and email the edited version to the Evidence Advisory Committee for review.

## **3. Rule 1102 & 511 Public Comments (*attached*) (Rick Schwermer)**

Mr. Schwermer noted that any comments submitted to Rules 1102 and 511 were supportive. The Committee agreed to recommend the Supreme Court adopt Rules 1102 and 511.

***Motion:*** Judge Mortensen made a motion to recommend the Supreme Court adopt Rule 1102. Mr. Hogle seconded the motion. The motion carried, two Committee members opposed the motion.

***Motion:*** Judge Mortensen made a motion to recommend to the Supreme Court to adopt Rule 511. Judge Kelly seconded the motion. The motion carried unanimously.

***Motion:*** Judge Kelly made a motion to submit the Committee notes for Rules 1102 and 511 to the Supreme Court with the corresponding rules. The motion was seconded. The motion carried unanimously.

#### **4. Rule 504 (attached) (John Lund)**

The Committee reviewed the clean version of proposed Rule 504 included in the meeting packet. The Committee agreed to make the following changes:

- (a) Definitions. (1) Line two delete “is” change “rendered” to “renders”  
(3) Line two should delete “which is” change “providing” to read “provides”
- (b) (B) delete “or” at the end of the paragraph

***Motion: Mr. Ed Havas made a motion to present Rule 504 including the above edits to the Supreme Court. Judge Keith Kelly seconded the motion. The motion passed unanimously.***

The Committee discussed the Linda Smith email about pro se litigants bringing a companion to participate in the attorney/client meeting without destroying the privilege, and the inclusion of a research exception. They agreed to consider these notions separately at a later date, but the consensus was that these two circumstances may already be covered.

The Committee agreed to submit the rule to the Supreme Court. Mr. Havas agreed to begin a draft of a Committee Note.

#### **6. Other Business (Mr. John Lund)**

**Next Meeting:** September 26, 2017  
5:15 p.m.  
AOC, Council Room