

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

MEETING MINUTES

**Tuesday– June 27, 2017
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

MEMBERS PRESENT

Mr. John Lund, Presiding
Hon. Matthew D. Bates
Mr. Christopher R. Hogle
Ms. Linda M. Jones
Hon. Keith A. Kelly
Mr. Adam Alba
Mr. Terence Rooney
Hon. David Mortensen
Ms. Jacey Skinner
Mr. Ed Havas
Ms. Lacey Singleton

GUESTS PRESENT

Ms. Nancy Merrill
Mr. Richard Schwermer

MEMBERS EXCUSED

Ms. Teresa Welch
Ms. Michalyn Steele
Ms. Deborah Bulkeley
Mr. Matthew Hansen

Hon. Vernice Trease
Ms. Teneille Brown

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

Mr. Lund welcomed everyone to the meeting.

Motion: Judge Kelly moved to approve the minutes from the Evidence Advisory Committee meeting on May 16, 2017. Mr. Ed Havas seconded the motion. The motion carried unanimously.

2. Report on Supreme Court Meeting (Mr. John Lund)

Mr. Lund reported that he and Mr. Schwermer recently attended the Supreme Court conference. He noted that they presented Rule 511 and Rule 1102 to the Supreme Court; both rules were approved and will go out for public comment.

Mr. Schwermer discussed Committee membership guidelines for Supreme Court Standing Committees. The Supreme Court will revisit the issue in the upcoming fall and Mr. Schwermer will update the Evidence Advisory Committee as it relates to them.

3. Final Review of Rule 504 (*attached*) (Mr. John Lund)

Mr. Hogle began the discussion by explaining his proposed edits to Rule 504. They discussed the definition of legal services, privilege, and confidentiality in the proposed rule. The Committee agreed to make the following edits to the proposed rule:

- (b) (1) include “legal service” after the word “obtaining”
- (b) (2) (B) edit the second line to read “but only if each client’s lawyer or lawyer’s representative was also present or included in the communications;”
- (b) add “(D) Lawyer referral service and lawyer”

After further discussion, Mr. Lund suggested that he make the edits that the Committee discussed and circulate the updated draft to the Committee for review.

4. Review of Draft Proposed EIE Rule (Eyewitness Identification Rule) (*attached*) (*Ms. Linda Jones et al.*)

Three guests from the Attorney General’s office attended the meeting to comment on Eyewitness Identification. The Committee and the guests discussed the question of whether to adopt the current legal standard or if the court should adopt more strict standards. The Committee suggested the following edits to the language in the proposed rule:

- (a)(4) definition of Showup should read: “Showup” means the presentation of a single person.....”
- (3)(C) amend the language to read: “Law enforcement instructed the witness that the person may or may not be the suspect.”
- (b) Admissibility of Eyewitness Testimony, amend the last line last line to read; “the identification procedure was:
(Subsection) unnecessarily suggestive or conducive to mistaken identification
(Subsection) clearly unreliable”

The Committee had further discussion on the language in the proposed rule. Mr. Lund suggested finishing the minor wordsmithing and reporting to the Supreme Court for further direction.

5. Other Business (Mr. John Lund)

Next Meeting:

August 29, 2017
5:15 p.m.
AOC, Council Room