

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

**MEETING MINUTES**

**Tuesday– September 26, 2017  
5:15 p.m.  
Council Room**

*Mr. John Lund, Presiding*

**MEMBERS PRESENT**

Ed Havas  
Adam Alba  
Michalyn Steele  
Linda M. Jones  
Judge Keith Kelly  
John Lund  
Deborah Bulkeley  
Judge David Mortensen  
Jacey Skinner  
Teresa Welch

**GUESTS PRESENT**

Heather White

**MEMBERS EXCUSED**

Lacey Singleton  
Judge Matthew Bates  
Terry Rooney  
Teneille Brown  
Chris Hogle  
Judge Vernice Trease  
Matthew Hansen

**STAFF PRESENT**

Richard Schwermer  
Nancy Merrill

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

Mr. Lund welcomed everyone to the meeting.

***Motion:*** *Ed Havas moved to approve the minutes from the Evidence Advisory Committee meeting on August 29, 2017. Teresa Welch seconded the motion. The motion carried unanimously.*

**2. Rule 504 & Committee Note (attached) (Ed Havas)**

The Committee discussed a Committee note draft for Rule 504. They discussed the possibility of

changing the order of the proposed note. After further discussion, Mr. Havas agreed to redraft the committee note including Mr. Hogle's suggestions. He asked the Committee to send him any edits that they may have to the committee note. Mr. Havas will send the new draft to the Committee members to be finalized at the next Evidence Advisory Committee meeting.

### **3. Eyewitness Identification Rule Finalization (*attached*) (Linda Jones et al.)**

The Committee discussed the direction for the proposed bill. They decided to draft the rule to follow the direction of the current statement law and make the following edits:

**Page 3 Other Relevant Circumstances:** (3) Strike "factors for"

**Page 3 (c) Admissibility of photographs:** (3) Add the following language after the word "source"; *and otherwise admissible under the Rules of Evidence.*

**Page 3 Jury Instruction and Expert Testimony:** (d) Insert a comma after "defendant"

***Motion:*** *Ed Havas made a motion to propose the rule to reflect current case law in response to the Supreme Court's request. Adam Alba seconded the motion. The motion passed unanimously.*

The Committee agreed to communicate to the Supreme Court that the committee note is a draft approach, and to seek further direction.

### **4. First Responder Privilege Proposal (John Lund)**

Heather White, a lawyer with Snow Christensen & Martineau, discussed the proposed Public Safety Peer Counseling Provisions draft with the Committee. The proposed bill is an attempt to provide first responders the option for peer counseling in order to process traumatic experiences in the field and making sure the discussion is not admissible in court. She discussed proposing a privilege using a similar concept in the proposed bill. The Committee had further discussion with Ms. White about her proposal.

***Motion:*** *Judge Kelly made a motion to have the Committee address Heather White's proposal. Ed Havas seconded the motion. The motion passed unanimously.*

Judge Bates, Deborah Bulkeley and Judge Mortensen will work with Heather White to draft rule language that will address the first responder privilege proposal issue and present their work at a future meeting.

**5. Other Business (Mr. John Lund)**

The Committee discussed editing out of date committee notes. One proposal is to revise the preliminary note to the Rules of Evidence. Mr. Lund asked to include the discussion of committee notes on the next Evidence Advisory Committee agenda.

**Next Meeting:** November 14, 2017  
5:15 p.m.  
AOC, Council Room