

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

MEETING MINUTES

**Tuesday – June 19, 2018
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

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

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

Mr. Lund welcomed everyone to the meeting.

Motion: Teresa Welch moved to approve the minutes from the Evidence Advisory Committee meeting on February 13, 2018. Chris Hogle seconded the motion and the motion carried unanimously.

2. Rule 617:

Mr. Lund reviewed the comments and suggestions received at the meeting with the Supreme Court on Rule 617. The following changes were suggested by the Supreme Court:

- Use the language “affected” in place of the language “impacted” throughout the rule.
- Address section (b) about admissibility in general and the broader set of issues that go into admissibility of evidence. It incorporates other aspects that go into the process of identification.
- The committee agreed subsection (c) will read:
If an identification procedure was administered to the witness by law enforcement and the procedure is contested, the court must determine whether the identification procedure was unnecessarily suggestive or conducive to mistaken identification. If so, the eyewitness identification must be excluded, unless the court, considering the factors in subsections (b) and (c) finds that there is not a substantial likelihood of misidentification.

Motion: Ms. Teneille Brown made a motion to give Rule 617 to the subcommittee to review the proposed changes to subsections (b) and (c), then bring the rule back to the next meeting for the Committee to review. Teresa Welch seconded the motion. The motion passed unanimously.

3. Rule 504 Comment:

Mr. Schwermer explained that the Supreme Court approved the text of the Rule 504 and requested that the Committee review the amended Committee note included in the packet. He noted that the amendment to the Committee note lead to a broader discussion about whether going forward existing Advisory Committee notes should be amended and updated. The Committee had further discussion about Committee notes and the process for drafting them going forward.

Motion: Judge Mortensen moved to approve the Supreme Court’s Rule 504 Committee note proposal. Teresa Welch seconded the motion. The motion passed unanimously.

4. Rule 902 article:

The Committee discussed the article included in the meeting materials. They discussed whether this issue should be considered for adoption in Utah. The majority of the Committee agreed that we should consider amending the rule. There was some discussion about possible conformational clause problems with amending Rule 902. After further discussion, Mr. Hogle agreed to research the issue further and report back to the Committee at the next meeting. .

5. Licensed Paralegal Practioners- Implications for the Rules of Evidence

Mr. Schwermer updated the Committee on the concept of Licensed Paralegal Practioner, the scope of authority is defined the upcoming rules.

The charge for the Rule of Evidence Committee is to determine if there are any inclusions or

exclusions that need to be made to the rules. The following rules were discussed:

- 504
- 410
- 613
- 615

The Committee discussed how to review the rules and agreed that they should begin the work on editing the rules as group.

6. Other Business (Mr. John Lund)

The Committee discussed the following upcoming projects:

- 617
- 902 Project, Chris Hogle
- LLP project

Next Meeting:

August 28, 2018
5:15 p.m.
AOC, Council Room