

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

MEETING MINUTES

**Tuesday– August 28, 2018
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

<u>MEMBER PRESENT</u> Adam Alba Hon. Matthew Bates Tenielle Brown Mathew Hansen Ed Havas Chris Hogle John Lund Jacey Skinner Teresa Welch Dallas Young Hon. Linda Jones (by phone) Hon. David Mortensen	<u>GUESTS PRESENT</u>
<u>MEMBERS EXCUSED</u> Nicole Salazar-Hall Terry Rooney Michalyn Steele Deborah Bulkeley Lacey Singleton Hon. Vernise Trease	<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: *Chris Hogle moved to approve the minutes from the Evidence Advisory meeting on June 19, 2018, including amendments. Matt Hansen seconded the motion. The motion carried unanimously.*

The following amendments were made to the minutes from the Evidence Advisory Committee meeting on June 19, 2018:

- Item 4 the word “conformational” should read “confrontational”

2. Review of Proposed Rule 617 (attached)

Judge Jones reviewed the proposed draft of Rule 617 with the Committee. Then the Committee members discussed the following edits:

- (c) the last sentence, “If so, the eyewitness identification must be excluded unless the court, considering the factors in subsection (b) and this subsection (c) finds that there is not a substantial likelihood of misidentification.”

Motion: Mat Hansen made a motion to approve the draft of the Rule 617 including the edit in (c). Tanielle Brown seconded the motion. The motion passed unanimously

The Committee discussed the draft of the Committee Note for Rule 617 and agreed on the following changes:

- delete the last sentence in the paragraph discussing Subsection (c)(2)
- delete the last sentence in the paragraph discussing Subsections (e) and (f)

Motion: Judge Mortensen moved to approve the Committee note including the deletion of the last sentence in Subsections (c) (2), (e) and (f) and to forward the Rule and the Committee note to the Supreme Court for approval. Tanielle Brown seconded the motion. The motion passed unanimously.

3. LPP Amendment to Rule 504 (attached)

Mr. Schwermer reviewed the proposed amendment in (2) (B) to Rule 504 which will take effect in November. The Committee is still concerned with any provision that seems to define license paralegal practitioners as lawyers. They discussed two options:

- Include a definition of a license paralegal practitioner separate from a definition of a lawyer and edit the language throughout the rule.
- Add a subsection at the end of the rule that distinguishes license paralegal practitioner from lawyer.

Cathy Dupont and Adam Alba agreed to work on drafting different versions of the rule to present at the next Evidence Advisory Committee meeting.

4. Rule 902 Report

Chris Hogle reported his research about whether Utah should adopt Subsections (13) and (14) in U.R.E. 902. The Committee had further discussion about the process of authentication.

Motion: Adam Alba made a motion to recommend adopting Subsections (13) and (14) in Utah Rule 902 to the Supreme Court. Tenielle Brown seconded the motion. The motion passed unanimously.

5. Rule 1101 (attached)

The Committee agreed to address this issue at the next meeting.

6. Letter from the Chief (attached)

The Committee discussed a letter from Chief Justice Durrant addressing Committee Rules and Committee Notes, the letter addressed the following two points:

- Language in Rules should be accessible to anyone reading the rules, law trained or not.
- Review the Committee notes and make sure that they are accurate based on existing case law, that the note explains the intent of the rule, the application of the rule and/or historical context for the rule. The Committee suggested that they consider the guidance and review the Committee Notes by dividing the notes among pairs of Committee members for review.

Tenielle Brown proposed that her law students review the Committee notes and work with the Committee members to review and update the Evidence Advisory Committee notes as necessary. Tenielle Brown and John Lund agreed to make a plan to implement this and report at the next Evidence Advisory meeting.

7. Other Business

Next Meeting: October 23, 2018
5:15 p.m.
AOC, Council Room