

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

MEETING MINUTES

**Tuesday – August 23, 2016
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

MEMBERS PRESENT

Ms. Michalyn Steele
Hon. Matthew D. Bates
Mr. Christopher R. Hogle
Mr. Adam Alba
Hon. Keith A. Kelly
Mr. John R. Lund
Mr. Terry Rooney
Judge David Mortensen
Ms. Jacey Skinner
Ms. Teresa Welch
Mr. Ed Havas
Hon. Vernice Trease
Mr. Matthew Hansen
Ms. Deborah Bulkeley
Ms. Lacey Singleton

GUESTS PRESENT

Mr. Paul Boyden

STAFF PRESENT

Ms. Nancy Merrill
Mr. Richard Schwermer
Mr. James Ishita

MEMBERS EXCUSED

Teneille Brown
Ms. Linda M. Jones

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

Mr. Lund welcomed everyone to the meeting.

The following correction was made to the Evidence Advisory Committee minutes on May 17, 2016: Item 3 should read; Terry “Rooney”.

Motion: *Mr. Ed Havas moved to approve the amended minutes from the Evidence Advisory Committee meeting on May 17, 2016. Mr. Terry Rooney seconded the motion. The motion passed unanimously.*

2. Welcome and Introduction of New Members (Mr. John Lund)

Mr. Lund welcomed the five newest members to the Evidence Advisory Committee.

3. Proposed New Rule 417(attached) (Mr. Paul Boyden)

Mr. Schwermer began the discussion by informing the Committee about the background of the Hate Crimes Bill and reviewing the last rule of evidence proposed during the 2016 legislative session. He noted that a draft of that proposed rule was brought to the Evidence Advisory Committee last year.

Mr. Boyden passed out a protected draft of Rule 417 to the Evidence Advisory Committee members. He discussed a potential bill that would amend the criminal code to enhance the penalty of the crime based on victim selection. The Committee had further discussion about the implications of the potential penalty enhancement amendment and discussed language suggestions with Mr. Boyden for the rule. After further discussion Mr. Lund suggested that Mr. Boyden consider the input from today's discussions and redraft the proposed rule for the Evidence Advisory Committee to review at a future meeting.

4. Federal Rule Amendments 803(16) and 902(attached) (Mr. John Lund)

Mr. Lund suggested putting together a work group to address the proposed changes in the federal rules. Mr. Chris Hogle, Judge Keith Kelly, and Mr. Adam Alba agreed to work on the subcommittee.

5. Progress Report on Eyewitness ID Joint Subcommittee (Hon. Matthew Bates)

Judge Bates reviewed the background on this issue. The Supreme Court asked the Evidence Advisory Committee and the Rules of Criminal Procedures Committee jointly to research the following issues:

- (A) The propriety and policy implications of a court issuing jury instructions aimed at advising a jury how to assess the reliability and credibility of certain kinds of witnesses or categories of evidence particularly in cases in which the defendant may not be able to afford an expert witness.
- (B) The possibility of addressing the matters dealing with jury instructions through a rule of evidence or procedure.

Judge Bates reported that the joint subcommittee members have taken specific assignments to research specific topics. Judge Bates will update the Evidence Advisory Committee on the progress of the Eyewitness ID Joint Subcommittee as needed.

6. Other Business (Mr. John Lund)

Next Meeting: October 11, 2016
5:15 p.m.
AOC

