

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

MEETING MINUTES

**Tuesday– May 17, 2016
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

MEMBERS PRESENT

Ms. Teneille Brown
Mr. Matthew D. Bates
Mr. Christopher R. Hogle
Ms. Linda M. Jones
Ms. Jacey Skinner
Mr. John R. Lund
Mr. Terence Rooney
Hon. David Mortensen
Mr. Tom Seiler
Ms. Teresa Welch
Mr. Ed Havas
Hon. Thomas Kay
Ms. Deborah Bulkeley
Mr. Patrick Anderson

GUESTS PRESENT

STAFF PRESENT

Ms. Nancy Merrill
Mr. Richard Schwermer
Mr. Tim Shea

MEMBERS EXCUSED

Judge Keith Kelly

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

Mr. Lund welcomed everyone to the meeting.

Motion: Mr. Chris Hogle moved to approve the minutes from Evidence Advisory meeting on February 16, 2016. Ms. Linda Jones seconded the motion. The motion carried unanimously.

Mr. Lund recognized and thanked Mr. Patrick Anderson, Mr. Thomas Seiler, and Judge Thomas Kay for their hard work and service on the Committee. Their committee terms have expired.

**2. Rules of Evidence & Rules of Criminal Procedure Joint Subcommittee
(attached) (Mr. John Lund)**

The Committee discussed a draft of a narrative attached to the meeting materials. The Supreme Court requests that a joint subcommittee be formed with members from the Rules of Evidence Committee and the Rules of Criminal Procedure Committee. Ms. Teneille Brown, Ms. Teresa Welch, Ms. Linda Jones, and Mr. Matt Bates volunteered to serve on the sub-committee.

3. Rule 504 & Committee Note (attached): (Mr. Ed Havas)

Mr. Havas reviewed his edits to the rule since the Committee last discussed it. The Committee discussed the changes concerning the definition “client” in the committee note. They had further discussion about authorizing spousal and other privileges in the rule. The Committee agreed to adopt the following proposed language changes to the Rule:

- Delete the word “professional”
- On line (4)(B) delete “ on behalf of the client”
- (b) “A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications if : (1)the communications were made for the purpose of facilitating the rendition of legal services to the client; and (2) the communications were among:” (A) and (B)

Motion: Ms. Teneille Brown made a motion to adopt the rule drafted by Mr. Ed Havas including the recommended changes. Mr. Tom Seiler seconded the motion. The motion passed unanimously.

The Committee discussed the Committee note and recommended the following changes:

- Line 5 -8 “An individual client might in a similar vein specifically authorize a person such as a spouse to communicate with the lawyer concerning a legal matter, with the same assurance and confidentiality under the privilege. The authorization may not be written, but may be inferred from the circumstances.”

Motion: Mr. Terry Rooney made a motion to approve the committee note with the recommended changes. Ms. Teresa Welch seconded the motion. The motion passed unanimously.

4. Rule 511 (attached): (Mr. John Lund)

The Committee agreed it would be beneficial to draft a note. Mr. Hogle agreed to draft the note and send it to the Committee via email for approval. The public comments were considered, but no changes were recommended.

5. Rule 412 (attached): (Mr. Tim Shea)

Mr. Shea reviewed the impetus for the proposed changes to Rule 412:

- page 1 line 25 and 26
- page 5 line 175 and 176

Motion: Ms. Teneille Brown made a motion to approve Mr. Shea's proposed changes to Rule 412 and the Committee note with a reference to Rule 4-202.02. Judge Thomas Kay seconded the motion. The motion passed unanimously.

6. Other Business (Mr. John Lund)

Next Meeting: August 23, 2016
5:15 p.m.
AOC, Council Room