

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

MEETING MINUTES

**Tuesday – November 29, 2016
5:15 p.m.
Council Room**

Mr. John Lund, Presiding

MEMBERS PRESENT

Ms. Jacey Skinner
Ms. Teresa Welch
Mr. Christopher R. Hogle
Ms. Linda M. Jones
Hon. Keith A. Kelly
Mr. John R. Lund
Mr. Terence Rooney
Hon. David Mortensen
Mr. Ed Havas
Hon. Vernice Trease
Mr. Matthew Hansen
Mr. Adam Alba
Ms. Lacey Singleton

GUESTS PRESENT

Mr. Paul Boyden

STAFF PRESENT

Ms. Nancy Merrill
Mr. Richard Schwermer

MEMBERS EXCUSED

Ms. Deborah Bulkeley
Ms. Michalyn Steele
Hon. Matthew Bates
Ms. Teneille Brown

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

Mr. Lund welcomed everyone to the meeting.

Motion: *Ms. Linda Jones moved to approve the minutes from the Evidence Advisory meeting on October 11, 2016. Mr. Matthew Hansen seconded the motion. The motion carried unanimously.*

2. Victim Selection Rule (attached) (Mr. Paul Boyden)

Mr. Boyden reported on a draft of a victim selections bill that will be presented to the legislature.

He is requesting that the draft be approved by the Evidence Advisory Committee. Mr. Boyden reported that the draft incorporates language that was discussed at the last Evidence Advisory Committee on the victim selection topic. The Committee had further discussion about the word “victim” in the draft and about language on lines 31-37. Specifically, they discussed the language on line 36.

Motion: Judge Keith Kelly made a motion to recommend to the Supreme Court adoption of the proposed rule including the amended language on line 36 to read “specifically relates to the defendant’s selection of the victim of the crime charged.” The recommendation is also contingent upon the legislature passing the Victim Selection Penalty Enhancement Statute. Judge Vernice Trease seconded the motion. The motion passed unanimously.

3. Report Back on Meeting with the Court (*attached*) (Mr. Rick Schwermer)

Mr. Schwermer reported on the following items:

- The Supreme Court approved the amendment to Rule 412, it will be effective May, 2017
- Rule 504 - the Supreme Court did not recommend adoption of the Committee’s draft and asked the Committee to redraft the rule. After further discussion Mr. Lund, Ed Havas, and Judge Kelly agreed to further research Rule 504 and report back at the next meeting.
- Rule 803 - the Supreme Court agreed with the Committee’s recommendation to defer adoption of the Rule.
- Rule 902 - the Supreme Court agreed with the drafting changes that added the notice clause to each specific sub paragraph. Judge Kelly, Chris Hogle, and Adam Alba agreed to draft a note for Rule 902 in order for the rule to go out for comment, with the goal of a May, 2017 effective date.
- Mr. Schwermer reported that the Supreme Court requested a broader perspective from the Committee on the eye-witness identification issue. He also noted that the Supreme Court recognized the thorough work that the subcommittee has done so far on the issue.
- Mr. Schwermer noted that the Committee will most likely be revisiting Rule 511

4. Rule 902 Committee Note: (*attached*) (Mr. Rick Schwermer)

The Supreme Court agreed with the drafting changes that added the notice clause to each specific sub paragraph. Judge Kelly, Chris Hogle, and Adam Alba agreed to draft a committee note for Rule 902 in order for the rule to go out for comment, with the goal of a May 1, 2017 effective date.

5. Particular Circumstances Subcommittee: (*attached*) (Linda Jones, et al.)

Ms. Jones discussed two possible perspectives to pursue with the eyewitness issue.

- Possibility one is to review and organize each circumstance and draft rules around each particular circumstance.
- Possibility two is to draft one broad rule, and to rely on jury instructions to supplement the rule.

The Committee discussed the pros and cons of both possibilities. The subcommittee agreed to start with the Massachusetts Rule, the work that they have already done, the *Long* instructions, and the summary of cases on eyewitness identification and draft a rule relating to eyewitness identification, then identify other particular circumstances issues.

6. ABA Proposal for Attorney Client Privilege: (*attached*) (Mr. John Lund)

The Committee agreed that there should be a privilege for communications between a person seeking legal help and lawyer referral services. The Committee had further discussion about language for defining different entities that provide legal assistance.

7. Other Business: (Mr. John Lund)

Next Meetings: January 17, 2017 if needed, & February 21, 2017
5:15 p.m.
AOC, Council Room