

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

MEETING MINUTES

**Tuesday– February 16, 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
Hon. Keith A. Kelly
Mr. John R. Lund
Mr. Terence Rooney
Hon. David Mortensen
Ms. Jacey Skinner
Ms. Teresa Welch
Mr. Ed Havas
Hon. Thomas Kay
Mr. Chad Platt
Ms. Deborah Bulkeley

GUESTS PRESENT

Senator Stephen Urquhart
Professor Cliff Rosky

STAFF PRESENT

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

MEMBERS EXCUSED

Mr. Tom Seiler
Mr. Patrick Anderson

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

Mr. Lund welcomed everyone to the meeting.

Motion: Judge Keith Kelly moved to approve the minutes from the November 17, 2015 Evidence Advisory meeting. Judge Thomas Kay seconded the motion. The motion carried unanimously.

2. Hate Crimes Proposal (Handout) (Mr. Rick Schwermer)

Mr. Schwermer passed out two drafts, the proposed amendment to the rules of evidence and the Joint Resolution Amending Rules of Evidence. Senator Urquhart is sponsoring Hate Crimes legislation and he attended the meeting to inform the Committee about the intent of the Hate

Crimes Legislation. He noted that Senator Urquhart is seeking drafting guidance on a standard of when evidence can be considered being sensitive to first amendment concerns about speech and association. The Committee, Senator Urquhart, and Professor Rosky discussed various scenarios regarding hate crimes and if adopted where the proposed rule would fit into the rules of evidence. Senator Urquhart will draft a substitute for Mr. Schwermer to pass onto the Committee for comment.

3. Rule 504 Report and Discussion (*attached*) (Mr. Ed Havas)

Mr. Havas updated the Committee on the current status of Rule 504, extending the attorney client privilege beyond the client. The subcommittee agreed to work on Rule 504 and consider the following questions:

- What have other jurisdictions done on this issue?
- What goals are being accomplished with the changes and what are possible unintended consequences that could come from the proposed changes?
- What language is used to confirm authorization by the client to talk to the attorney?
- The Committee suggested possible language in (a) (4) of the Committee Note: “representative of the client means a person or entities; (a) having the authority to obtain legal services, (b) having the authority to act on advice, and (c) specifically authorized to communicate.”

Mr. Havas agreed to consider the comments that were discussed and prepare a revision to be reviewed at the next Evidence Advisory Committee meeting.

4. Eyewitness Subcommittee: (Mr. John Lund)

Mr. Schwermer passed out a draft of the Eyewitness Subcommittee description. He noted that the Supreme Court would like to find three or four people from the Evidence Advisory Committee to serve on the subcommittee. The appointed members would consist of half Criminal Procedure and half Evidence Advisory Committee members. Mr. Lund asked the Committee to review the handout and contact Mr. Schwermer or John Lund if they have interest in being on the Eyewitness Subcommittee.

5. Other Business: (Mr. John Lund)

Judge Kay expressed concern with the Hate Crimes Legislative proposal. Mr. Schwermer noted that the agenda for the next Evidence Advisory Committee meeting will include Rule 504 and the Eyewitness Subcommittee. John Lund noted that in the summer of 2016 some members of the Evidence Advisory Committee terms will be expired.

Next Meeting: 5:15 p.m., April 19, 2016
AOC, Council Room

