

# AGENDA

## Utah Supreme Court Advisory Committee / Rules of Evidence

September 14, 2021 / 5:15 p.m. – 7:15 p.m.

### Meeting held via WEBEX

<b>Approval of Minutes</b> <ul style="list-style-type: none"><li>June 8, 2021</li></ul>	Action	Tab 1	Chris Hogle
<b>Change in leadership &amp; Terms</b> <ul style="list-style-type: none"><li>CJA 11-101 Amendments</li></ul>	Discussion	Tab 2	Chris Hogle Nicole Salazar-Hall
<b>Rules back from public comment:</b> <ul style="list-style-type: none"><li>URE 504. Lawyer-Client</li></ul>	Action	Tab 3	Chris Hogle
<b>Supreme Court Conference Update:</b> <ul style="list-style-type: none"><li>404 Special Conference Planning</li></ul>	Discussion		Judge Welch Teneille Brown
<b>URE 506 Subcommittee Update</b>	Discussion		Sarah Carlquist
<b>Rapid Response Legislative Subcommittee</b>	Discussion / Action		Chris Hogle

#### Queue:

- Ongoing Project: Law Student Rule Comment Review

#### 2021 Meeting Dates:

October 12, 2021  
November 9, 2021

#### 2022 Meeting Dates:

January 11, 2022  
February 8, 2022  
April 12, 2022  
June 14, 2022  
October 11, 2022  
November 8, 2022

#### Rule Status:

URE 106 – Committee (drafting memo)  
URE 404(b) & (d) – Back to Committee/Special SC conference planning  
URE 504 – Back from public comment  
URE 506 – Subcommittee  
URE 507.1 – Waiting on DoH guidelines  
URE 512 – Ready for SC (final approval)  
URE 1101 – Ready for SC (final approval)

# Tab 1

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

**MEETING MINUTES**

**DRAFT**

**June 8, 2021**

**5:15 p.m.-7:15 p.m.**

**Via Webex**

***Mr. John Lund, Presiding***

<u>MEMBERS PRESENT</u>	<u>MEMBERS EXCUSED</u>	<u>GUESTS</u>	<u>STAFF</u>
Adam Alba Deb Bulkeley Sarah Carlquist Tony Graf Mathew Hansen Ed Havas Chris Hogle Hon. Linda Jones John Lund, Chair Hon. Richard McKelvie John Nielsen Jennifer Parrish Nicole Salazar-Hall Hon. Vernice Trease Hon. Teresa Welch Hon. David Williams Dallas Young	Teneille Brown Melinda Bowen	Christopher Williams	Keisa Williams Minhvan Brimhall

---

**1. WELCOME AND APPROVAL OF MINUTES:**

The committee considered the April 13, 2021 meeting minutes. With no modifications, John Nielsen moved to approve the minutes. Dallas Young seconded and the motion passed unanimously.

**2. Rules back from public comment:**

- URE 512. Victim Communications.
- URE 1101. Applicability of Rules.

Ms. Carlquist: With respect to the public comment from Nathalie Skibine, I believe her concern is that it's confusing to lean on *Weeks* so much when there are more cases to suggest that restitution hearings may not be such simple matters.

Mr. Lund: The public comment about rule 512 underscores the committee's ongoing concerns.

After further discussion, Ms. Parrish moved to approve rule 512 as drafted, with a note to the Supreme Court that there is nothing in the public comments indicating that the rule cannot be approved as final. Mr. Graf seconded and the motion passed unanimously.

**3. Supreme Court Conference update:**

- URE 504 (approved for comment)
- URE 404 (back to committee)

Ms. Williams: The Supreme Court did not have any comments on Rule 507.1. It is on hold until the Department of Health publishes its guidelines. Several members were reappointed for a second term. Rule 504 went out for public comment.

Mr. Lund: The Court appreciated having both sides of the Rule 106 issue summarized in a memo. With respect to Rule 404, the Court said that the committee should not feel restrained by caselaw. They are open to all ideas, even a recommendation that the doctrine of chances not exist at all. Professor Brown's recent law review article is included in the packet.

The Court is interested in studying the issue in more detail. They've asked the committee to compile a reading file for them on all sides of this topic and to present the issues at a special conference dedicated to URE 404 and the doctrine of chances. The Court is looking to the Committee to present the information they need and help guide them through this decision-making process. Tentatively, the plan is to schedule a special 404 conference in October. So far, the presenters are Professor Brown, Professor Imwinkelried, Judge Welch, and Judge Harris. A small subcommittee is working on putting materials together and scheduling presenters.

The Committee discussed Professor Brown's law review article and whether any committee members held the opinion that the doctrine of chances should be gutted entirely. The committee will set aside time at the next meeting to finalize the conference materials, issues, and presentations.

**4. URE 106 Subcommittee update:**

Judge Welch: The federal rules committee met on April 30th and voted to approve proposed federal rule 106 and the accompanying committee note. It should now go out for public comment. The subcommittee met and addressed a few questions brought up at the last

meeting. The proposed federal rule covers oral statements, not just written statements. The question for the committee is whether Utah should adopt the new federal rule?

Ms. Carlquist: I like it when our rules map the federal rules. You can draw on more authority to make your arguments. The federal rule is pretty close to what we proposed, but without the rule 403 backstop, which I felt added more confusion than clarity.

Judge Welch: I think it's important that the Utah rule define what it means to "introduce."

Mr. Hogle: I think we should strive to adhere to the federal rules as much as possible. Defining "introduce" is an important issue, but I don't think it's so important that we deviate from the federal rule. We can explain it in the note.

After further discussion, the committee agreed to follow the federal language about fairness and the hearsay objection, specifically the last sentence in the federal rule. The committee was divided on how to address oral statements.

**Federal Rule:** If a party introduces all or part of a written or oral statement, an adverse party may require the introduction, at that time, of any other part — or any other written or oral statement — that in fairness ought to be considered at the same time. The adverse party may do so over a hearsay objection.

**Committee proposal:** If a party introduces all or part of a writing or recorded statement, or testimony of the contents thereof, an adverse party may require the introduction, at that time, or on cross-examination of that same witness, of any other part — or any other writing or recorded statement — that in fairness is reasonably necessary to qualify, explain, or place into context any portion already introduced. If the other part, writing, or recorded statement is otherwise inadmissible under these rules, it may be admitted for the truth of the matter asserted, unless the court decides otherwise under rule 403.

Mr. Lund took a poll on the oral statement issue: 7 members voted in favor of following the language in the federal rule. 5 members voted to stick with the language proposed by committee. Ms. Carlquist moved to recommend the federal version of rule 106 to the Supreme Court, with a minority statement expressing concerns over including oral statements, along with suggested alternative language. Ms. Salazar-Hall seconded the motion and it passed unanimously.

Mr. Nielsen will write the minority statement for the Supreme Court memo and send it to Mr. Hogle for review.

## **5. URE 506 Subcommittee:**

Ms. Carlquist: In *State v. Bell*, the Supreme Court raised some concerns about rule 506 and asked the committee to consider the importance of maintaining a strong privilege rule, while more clearly defining what is required to qualify for an exception. In Utah, the standard to overcome a rule 506 privilege in criminal cases is to establish that the elements of the exception are met to a reasonable degree of certainty. The Court seems to want the standard by which you have to meet the elements of the privilege incorporated into the rule and thinks that “reasonable certainty” is too high. Mr. Nielsen conducted a 50-state survey. Standards in some of the other states were “reasonably necessary,” “probable cause,” “good faith,” and “reasonable probability.”

Ms. Salazar-Hall: We focused on balancing a victim’s right to privacy with a defendant’s constitutional right to due process. We don't want to prevent victims from seeking mental health treatment, but we also don't want to prevent defendants from discovering critical evidence.

Mr. Lund: Does this belong better in Rule 510? It isn’t necessarily limited to the physician-patient privilege. Ms. Salazar-Hall: This is applicable in family law and child welfare cases.

Mr. Hogle: There is some relationship to Rule 35 of the Rules of Civil Procedure. Under Rule 35, you can get a court-ordered physical or mental examination. It doesn't explain what “controversy” means, but I suspect it’s similar to federal rule 35. There might be some case law to flesh it out.

Judge Trease: Criminal cases primarily involve victims of sexual abuse and victims are not necessarily parties. The considerations under those circumstances should be different than in most civil cases. We may want to get input from victim advocates.

The subcommittee will continue its work and bring something back to the committee at the next meeting.

## **6. URE 412. Admissibility of Victim’s Sexual Behavior or Predisposition:**

Mr. Neilsen recommended a minor change to rule 412. A number of attorneys in juvenile cases have successfully argued that rule 412 doesn't apply in juvenile cases because the rule says “in criminal proceedings.” In juvenile court, these are civil proceedings. The victims’ interest in privacy and the need to encourage this sort of reporting applies equally to juvenile proceedings. The proposed amendment explicitly includes juvenile delinquency proceedings.

Mr. Neilsen moved to approve URE 412 as drafted for a recommendation to the Supreme Court that it be sent out for public comment. Judge McKelvie seconded and the motion passed unanimously.

**Next Meeting: September 14, 2021, 5:15 pm, Webex video conferencing**

# Tab 2



## **Rule 11-101. Creation and Composition of Supreme Court Committees.**

### **Intent:**

To establish Supreme Court committees and procedures to govern those committees.

### **Applicability:**

This rule shall apply to the Supreme Court, the Administrative Office of the Courts, and the Supreme Court committees.

### **Statement of the Rule:**

(1) **Establishment of committees.** There is hereby established a Supreme Court advisory committee in each of the following areas: civil procedure, criminal procedure, juvenile court procedure, appellate procedure, evidence, and the rules of professional conduct. The Supreme Court may establish ad hoc or oversight committees. The Supreme Court shall designate a liaison to each committee.

(2) **Composition of committees.** The Supreme Court shall determine the size of each committee based upon the workload of the individual committees. The committees should be broadly representative of the legal community and should include practicing lawyers, academicians, and judges. Members should possess expertise within the committee's jurisdiction. A committee may also have up to two nonvoting emeritus members. An emeritus member has the same authority and duties as other committee members, except that such member shall have no authority to vote. An emeritus member may serve two terms in addition to the terms served as a member.

(3) **Application and recruitment of committee members.** Vacancies on the advisory committees shall be announced in a manner reasonably calculated to reach members of the Utah State Bar. The notice shall specify the name of the committee that has the vacancy, a brief description of the committee's responsibilities, the method for submitting an application or letter of interest, and the application deadline. Members of the committees or the Supreme Court may solicit applications for membership on the committees. Applications and letters of interest shall be submitted to the Supreme Court.

(4) **Appointment of advisory committee members and chair.** Upon expiration of the application deadline, the Supreme Court shall review the applications and letters of interest and appoint those individuals who are best suited to serve on the committee. Members shall be appointed to serve staggered three-year terms. In the event of a mid-term vacancy the Supreme Court shall appoint a new member to serve for the remainder of the term. The Supreme Court shall select a chair from among the committee's members. The Supreme Court may select a vice-chair from among the committee's members. No member may serve more than two full consecutive terms on the committee unless appointed by the Supreme Court as the committee chair, vice-chair, or when justified by special circumstances, such as an academician or court staff attorney. Generally, members appointed as chair or vice-chair may serve only one term in each leadership position, not to exceed two additional terms. .

Judges who serve as members of the committees generally shall not be selected as chairs. Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of a committee in any calendar year, and at every meeting at which a new member of the committee first attends, each committee member shall briefly disclose the general nature of his or her legal practice.

(5) **Absences.** In the event that a committee member fails to attend three committee meetings during a calendar year, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that committee member.

(6) **Administrative assistance.** The Administrative Office of the Courts shall coordinate staff support to each committee, including the assistance of the Office of General Counsel in research and drafting and the coordination of secretarial support and publication activities.

(7) **Recording secretaries.** A committee chair may appoint a third-year law student, a member of the Bar in good standing, or a legal secretary to serve as a recording secretary for the committee. The recording secretary shall attend and take minutes at committee meetings, provide research and drafting assistance to committee members and perform other assignments as requested by the chair.

*Effective July 9, 2021*

# Tab 3

# UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on “Continue Reading.” To submit a comment, scroll down to the “Leave a Reply” section, and type your comment in the “Comment” field. Type your name and email address in the designated fields and click “Post Comment.”

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

[HOME](#)

[LINKS](#)

Posted: June 7, 2021

Utah Courts

## Rules of Evidence – Comment Period Closed July 22, 2021

**URE0504. Lawyer – Client.** Extends the lawyer-client privilege to cover Licensed Paralegal Practitioners and Regulatory Sandbox participants.

This entry was posted in [-Rules of Evidence, URE0504.](#)

« [Rules of Juvenile Procedure – Comment Period Closed July 31, 2021](#)

[Code of Judicial Administration – Comment Period Closed July 17, 2021](#) »

Search...

SEARCH

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

## CATEGORIES

- [-Alternate Dispute Resolution](#)
- [-Code of Judicial Administration](#)
- [-Code of Judicial Conduct](#)
- [-Fourth District Court Local Rules](#)
- [-Licensed Paralegal Practitioners Rules of Professional Conduct](#)
- [-Rules Governing Licensed Paralegal Practitioner](#)
- [-Rules Governing the State Bar](#)

UTAH COURTS

[View more posts from this author](#)

#### 4 thoughts on “Rules of Evidence – Comment Period Closed July 22, 2021”

**Douglas Crapo**  
**June 7, 2021 at 9:44 am**

First, the proposed addition to subsection (a)(2) should not include the word “shall.” It adds no value to the meaning of the sentence, and it perpetuates an anachronistic use of the inherently ambiguous word.

Second, in the same subsection, I find it curious that the authorization to provide legal services comes from the “State of Utah” rather than the Bar and/or the Utah Supreme Court. The proposed phrase makes it sound as if a legislative or administrative body (e.g., DOPL) is the authorizing entity.

**Dean Collinwood**  
**June 7, 2021 at 11:55 am**

Please re-draft this proposal. Paralegals are not lawyers, but this definition says they are. Needs re-working.

**Samantha Smith**  
**June 7, 2021 at 5:08 pm**

To the detriment of everyone involved, this proposal inadvisably expands the scope of attorney-client privilege to include individuals who are not attorneys. Every attorney licensed in this state should vehemently oppose this expansion.

This proposal stretches the definition of “lawyer” to include people who are not lawyers: “For purposes of this Rule, “lawyer” shall also mean a licensed paralegal practitioner, a lawyer referral service, or any other person or entity authorized by the State of Utah to provide legal services.”

The proposed rule offers no tailoring of this sacred privilege to suit licensed paralegal practitioners (“LPPs”). Rather, it fundamentally changes the definition of lawyer to shoe-horn LPPs and their “regulatory sandbox” further into the practice of law. As the late Justice Scalia said, “this wolf comes as a wolf.”

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05

I hope the irony is not lost that the field of law, dedicated to scrupulous examination of the intent of words, their essential meaning, and their consistency in application, has jumped on the band-wagon of shape-shifting terminology. To be clear, this proposal will not be remedied by new language in the rule differentiating between lawyers and LPPs. The resulting confusion between attorneys and paralegals presents risk to the most vulnerable of our society. LPPs are rightfully limited in their scope of representation under Rule 14-802 because they are not practicing attorneys. The scope of LPP practice is largely limited to advising a client in the determination and completion of relevant forms.

Only licensed, active members of the Utah Bar may counsel and advise a client by applying the law and associated legal principles to the facts and circumstances of that specific client. Candid and forthright privileged communication between the attorney and client is essential to foster this advocacy. An attorney has significant legal training to know when she or he must disclose the contents of the communication under Rule 504, and the implications other rules of ethics. Most importantly, confidential communications foster a belief in the client that the attorney is advising the client in a multitude of ways, encompassing multiple legal issues. Why else would the communications have such privilege? As LPPs are not permitted to counsel and advise a client in this manner, they have no need for the privilege afforded to clients represented by attorneys.

The LPP regulatory sandbox program was created to increase access to justice through offering a lower-cost alternative to attorneys. But many times in life, the cheapest way to pay is with money. What this program has failed to grapple with is the reality of how the law works: people and businesses with money will always hire attorneys. It is the most vulnerable in our population who seek out the low-cost alternative. Society's vulnerable need to remain mindful of the limitations of an LPP; this proposal sows confusion. We've already blurred the lines enough. Further encouraging naïve consumers to confide in an LPP because of "attorney-client" privilege doesn't just blur the line—it erases it completely. Facilitating meaningful access to justice deserves a broader legislative initiative, rather than a band-aid.

If lawyers—by which I mean actual lawyers educated specifically in the area of law through a juris doctor degree and subsequently licensed to practice law after passing a character and fitness determination and a bar exam—are superfluous to the practice of law, perhaps it is time to open the floodgates. In an age of Instagram "divorce coaches" replacing experienced family law attorneys, I can't say I'm surprised that the next step involves a definition that a lawyer is not necessarily a lawyer.

I dissent.

Georganna A Petry  
June 12, 2021 at 9:39 am

- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
- CJA03-0306.04
- CJA03-0306.05
- CJA03-0401
- CJA03-0402
- CJA03-0403
- CJA03-0404
- CJA03-0406
- CJA03-0407
- CJA03-0408
- CJA03-0410
- CJA03-0411
- CJA03-0412
- CJA03-0413
- CJA03-0414
- CJA03-0415
- CJA03-0418
- CJA03-0419
- CJA03-0501
- CJA03-0501
- CJA04-0103
- CJA04-0106
- CJA04-0110
- CJA04-0201
- CJA04-0202
- CJA04-0202.01
- CJA04-0202.02
- CJA04-0202.03
- CJA04-0202.04
- CJA04-0202.05
- CJA04-0202.06
- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206

I agree that paralegals should not be explicitly or implicitly defined as lawyers. However, it is important that the support staff and lone paralegals should be subject to rules including them in lawyer-client privilege.

- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402
- CJA04-0403
- CJA04-0404
- CJA04-0405
- CJA04-0408
- CJA04-0408.01
- CJA04-0409
- CJA04-0410
- CJA04-0411
- CJA04-0501
- CJA04-0502
- CJA04-0503
- CJA04-0508
- CJA04-0509
- CJA04-0510
- CJA04-0510.01
- CJA04-0510.02
- CJA04-0510.03
- CJA04-0510.04
- CJA04-0510.05
- CJA04-0510.06
- CJA04-0601
- CJA04-0602
- CJA04-0603
- CJA04-0609
- CJA04-0610
- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902
- CJA04-0903
- CJA04-0904
- CJA04-0905
- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0102
- CJA06-0303
- CJA06-0401
- CJA06-0402
- CJA06-0501
- CJA06-0503
- CJA06-0504
- CJA06-0505
- CJA06-0506
- CJA06-0506
- CJA06-0507
- CJA06-0601
- CJA07-0101

**Rule 504. Lawyer - Client.****(a) Definitions.**

(a)(1) "Client" means a person, public officer, corporation, association, or other organization or entity, either public or private, who is rendered legal services by a lawyer or who consults a lawyer ~~or a lawyer referral service~~ to obtain legal services.

(a)(2) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation. For purposes of this Rule, "lawyer" shall also mean a licensed paralegal practitioner, a lawyer referral service, or any other person or entity authorized by the State of Utah to provide legal services.

(a)(3) "Licensed paralegal practitioner" means a person authorized by the Utah Supreme Court to provide legal services under Rule 15-701 of the Supreme Court Rules of Professional Practice.

(a)(43) "Lawyer referral service" means an organization, either non-profit or for-profit, that is providing intake or screening services to clients or prospective clients for the purpose of referring them to legal services.

(a)(45) "Legal services" means the provision by a lawyer ~~or lawyer referral service~~ of:

(a)(54)(A) professional counsel, advice, direction or guidance on a legal matter or question;

(a)(54)(B) professional representation on the client's behalf on a legal matter; or

(a)(54)(C) referral to a lawyer.

(a)(65) "Lawyer's representative" means a person or entity employed to assist the lawyer in the rendition of legal services.

(a)(67) "Client's representative" means a person or entity authorized by the client to:

(a)(67)(A) obtain legal services for or on behalf of the client;

(a)(76)(B) act on advice rendered pursuant to legal services for or on behalf of the client;

(a)(76)(C) provide assistance to the client that is reasonably necessary to facilitate the client's confidential communications; or

(a)(76)(D) disclose, as an employee or agent of the client, confidential information concerning a legal matter to the lawyer.



(a)(87) "Communication" includes:

(a)(78)(A) advice, direction or guidance given by the lawyer, or the lawyer's representative ~~or a lawyer referral service~~ in the course of providing legal services; and

(a)(87)(B) disclosures of the client and the client's representative to the lawyer, or the lawyer's representative ~~or a lawyer referral service~~ incidental to the client's legal services.

(a)(98) "Confidential communication" means a communication not intended to be disclosed to third persons other than those to whom disclosure is in furtherance of rendition of legal services to the client or to those reasonably necessary for the transmission of the communication.

**(b) Statement of the Privilege.** A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications if:

(b)(1) the communications were made for the purpose or in the course of obtaining or facilitating the rendition of legal services to the client; and

(b)(2) the communications were:

(b)(2)(A) between (i) the client or the client's representative and (ii) the lawyer, the lawyer's representatives, or a lawyer representing others in matters of common interest; or

(b)(2)(B) between clients or clients' representatives as to matters of common interest but only if each clients' lawyer or lawyer's representatives was also present or included in the communications; or

~~(b)(2)(C) between (i) the client or the client's representatives and (ii) a lawyer—referral service; or (b)(2)(D) between (i) the client's lawyer or lawyer's representatives and (ii) the client's lawyer referral service.~~

**(c) Who May Claim the Privilege.** The privilege may be claimed by:

(c)(1) the client;

(c)(2) the client's guardian or conservator;

(c)(3) the personal representative of a client who is deceased;

(c)(4) the successor, trustee, or similar representative of a client that was a corporation, association, or other organization, whether or not in existence; and

89  
90 (c)(5) the lawyer ~~or the lawyer referral service~~ on behalf of the client.  
91

92 (d) **Exceptions to the Privilege.** Privilege does not apply in the following circumstances:  
93

94 (d)(1) **Furtherance of the Crime or Fraud.** If the services of the lawyer were sought or  
95 obtained to enable or aid anyone to commit or plan to commit what the client knew or  
96 reasonably should have known to be a crime or fraud;  
97

98 (d)(2) **Claimants through Same Deceased Client.** As to a communication relevant to  
99 an issue between parties who claim through the same deceased client, regardless of  
100 whether the claims are by testate or intestate succession or by inter vivos transaction;  
101

102 (d)(3) **Breach of Duty by Lawyer or Client.** As to a communication relevant to an issue  
103 of breach of duty by the lawyer to the client;  
104

105 (d)(4) **Document Attested by Lawyer.** As to a communication relevant to an issue  
106 concerning a document to which the lawyer was an attesting witness; or  
107

108 (d)(5) **Joint Clients.** As to the communication relevant to a matter of common interest  
109 between two or more clients if the communication was made by any of them to a lawyer  
110 retained or consulted in common, when offered in an action between any of the clients.

Effective ~~May~~ November 1, 20\_\_18

**2018 Advisory Committee Note.** These amendments are limited to the scope of the attorney-client privilege. Nothing in the amendments is intended to suggest that for other purposes, such as application of the Utah Rules of Professional Conduct or principles of attorney liability, an attorney forms an attorney-client relationship with a person merely by making a referral to another lawyer, even if privileged confidential communications are made in the process of that referral.