

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

**MEETING MINUTES
September 14, 2021
5:15 p.m.-7:15 p.m.
Via Webex**

Mr. Chris Hogle, Presiding

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

1. WELCOME AND APPROVAL OF MINUTES:

Chris Hogle welcomed everyone to the meeting. The June meeting was John Lund's last meeting. Mr. Hogle expressed appreciation for Mr. Lund's dedication and service to the committee. Mr. Hogle has been appointed as Chair, with Nicole Salazar-Hall appointed as Vice-chair.

Mr. Hogle asked for any corrections to the June 18, 2021 meeting minutes. With one minor correction, Tony Graf moved to approve the minutes. Sarah Carlquist seconded the motion and it passed unanimously.

2. Change in leadership and terms:

- CJA 11-101 Amendments.

The Supreme Court amended Code of Judicial Administration rule 11-101. Member terms were reduced from 4 to 3 years and a Vice-Chair position was created. Chairs and vice-chairs may serve one term in each leadership position, not to exceed two additional terms.

3. Rules back from public comment:

- URE 504. Lawyer-Client

The public comment period for rule 504 closed on July 22, 2021, having received four comments. The committee reviewed comments submitted by Mr. Douglas Crapo. Mr. Crapo recommends removing “shall” from subsection (a)(2) as “shall” does not add value to the drafted language. Mr. Crapo also recommends modification to the second sentence in the same section. As currently drafted, the language suggests another governmental entity is the authorizing entity in determining who can provide legal services in the state. The committee agreed with Mr. Crapo’s recommendations.

The committee also discussed comments submitted by Dean Collinwood, Samantha Smith, and Georganna Petry. All three commenters expressed concerns with expanding the definition of “lawyer” to include Licensed Paralegal Practitioners and other non-lawyers. After further discussion, the subcommittee agreed to prepare a draft of a separate rule addressing the privilege for LPPs and the other non-lawyers identified in the current draft, or to amend the definition of “lawyer” throughout URE 504. The subcommittee will provide an update at the next meeting.

4. Supreme Court Conference update:

- URE 404. Special Conference Planning

The subcommittee has not had a chance to meet with the Supreme Court yet. Ms. Williams will coordinate with the subcommittee and Nick Stiles to schedule a date for the conference, confirm the presenters, compile materials, and submit the questions at issue to the Supreme Court for approval. The Subcommittee will provide an update at a future meeting.

Judge Welch stated that the Supreme Court recently issued an opinion in *State v. Richins* addressing the Doctrine of Chances. Professor Brown noted that during the last meeting with the Supreme Court, the Justices asked the committee to “think big” about what makes the most sense, including a world in which the DoC doesn't exist.

5. URE 506 Subcommittee update:

The URE 506 subcommittee is working on developing a standard process for access to a victim’s psychiatric records by the defense, balancing a victim’s need for treatment with the defendant’s constitutional right to due process. The subcommittee intends to use the process outlined in URE 505 as the basis for the procedure in 506 and will present a draft at the next committee meeting.

6. Rapid Response Legislative Subcommittee:

Due to his appointment as Chair, Mr. Hogle is no longer able to serve as the organizer of the rapid response legislative subcommittee. Matt Hansen will be added as a member. Dallas Young, Judge McKelvie, and Ms. Salazar-Hall will continue to serve on the subcommittee, with Nicole acting as chair.

7. Additional business: URE 106

At the June meeting, the majority of the committee voted in favor of adopting the federal version of URE 106, incorporating oral statements. Mr. Nielsen prepared a minority report. The question is whether the rule of completeness would apply to oral statements or be confined to written and recorded statements. Rather than preparing a majority statement, the committee will submit Professor Capra's memo in support of the majority's position.

Adjourn:

With no further items for discussion, Mr. Hogle moved to adjourn the meeting. The next meeting will be held on Tuesday, October 12, 2021 at 5:15 pm, via Webex video conferencing.