Utah Supreme Court Advisory Committee Rules of Evidence

AGENDA

January 11, 2022 5:15 p.m. - 7:15 p.m.

Meeting held via WEBEX

Approval of Minutes • November 9, 2021	Action	Tab 1	Chris Hogle
URE 404 Update	Discussion		Chris Hogle/ Judge Welch
URE 504 Update	Action	Tab 2	Subcommittee

Queue:

Ongoing Project: Law Student Rule Comment Review

2022 Meeting Dates:	ule Status:
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February 8, 2022 URE 106 - Under consideration by Supreme Court April 12, 2022 URE 404 - Under consideration by Supreme Court June 14, 2022 URE 412 - Under consideration by Supreme Court URE 504 - Returned to Committee from Supreme Court October 11, 2022 November 8, 2022

URE 506 - Sub-Committee

URE 507.1 - Awaiting DoH guidelines

URE 512 - Approved by Supreme Court (final approval) URE 1101 - Approved by Supreme Court (final approval)

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF EVIDENCE

MEETING MINUTES

PROPOSED

November 9, 2021 5:15 p.m.-7:15 p.m. Via Webex

MEMBERS PRESENT	MEMBERS EXCUSED	GUESTS	STAFF
Teneille Brown	Deborah Bulkeley	Bethany Warr	Keisa Williams
Sarah Carlquist	Chris Hogle	Debbie Hill	Gage Hansen
Tony Graf	Minhvan Brimhall	Keri Sargent AOC	
Ed Havas		Mathew Morrise	
Hon. Linda Jones		Annie Taliaferro	
Jennifer Parrish		Jacqueline Carlton	
Nicole Salazar-Hall			
Hon. Vernice Trease			
Hon. Teresa Welch			
Hon. David Williams			
Adam Alba			
Melinda Bowen			
Matthew Hansen			
Hon. Richard McKelvie			
John Nielsen			
Dallas Young			
Angelica Juarez			

1. WELCOME AND APPROVAL OF MINUTES:

Ms. Salazar-Hall filled in for Chris Hogle, who was unable to attend. Ms. Salazar-Hall asked for any corrections to the September 14, 2021 meeting. *Upon no objections to the minutes, John Neilson moved to approve the minutes. Dallas Young seconded the motion and it passed unanimously.*

2. New staff introduction:

Ms. Salazar-Hall introduced Angelica Juarez and Gage Hansen. Ms. Juarez will be the Committee's recording secretary. Mr. Hansen will be replacing Keisa Williams. Ms. Salazar-Hall expressed appreciation for Keisa's dedication and service to the committee.

3. URE 506 rule draft:

Ms. Carlquist and Mr. Nielsen introduced guest speakers from the crime victim's legal clinic and several defense attorneys who provided more perspective on the ramifications of our rule changes. The speakers were Matthew Morrise, Debbie Hill, Annie Taliaferro, and Susanne Gustin, and Bethany Warr.

After a lively discussion, Ms. Salazar-Hall expressed appreciation of everyone's views and indicated that neither of the two options presented will be chosen. Ms. Salazar-Hall moved for the Rule 506 Subcommittee revise the rule in light of the discussion and consider reaching out to the criminal procedure rules committee. Mr. Young seconded the motion, which passed unanimously.

4. URE 504 rule draft:

Ms. Parish shared the two new approaches for the committee to consider, both of which were set forth under Tab 3 of the Agenda.

Ms. Carlquist and Ms. Salazar-Hall favored the first approach and complimented the subcommittee.

Mr. Young raised the concern from attorneys who don't want to be lumped in the same category as other legal service providers. Mr. Havas similarly raised concerns over comments that the pride of lawyer terminology is watered down by including others. Mr. Havas suggested that perhaps the title could be changed to legal service provider-client privilege.

Ms. Carlquist suggested that the first approach may help address that concern.

Judge Williams expressed his preference to approach number one.

Ms. Salazar-Hall expressed hesitance towards changing the title to "Legal Service Provider."

Mr. Nielson expressed his preference to approach number one.

Ms. Parrish expressed her preference to approach number 1, which keeps the emphasis on the lawyer-client privilege that is just being extended in some contexts.

Ms. Salazar-Hall disagreed with changing the title to legal service provider and expressed concern that it would absolutely raise some lawyer's hackle in a massive way.

Ms. Carlquist moved to send the first option to the Supreme Court. Judge Williams seconded the motion. There was a unanimous vote in its favor. Approach one will be sent to the Supreme Court as drafted.

Adjourn:

With no further items for discussion, Ms. Salazar-Hall moved to adjourn the meeting. The next meeting will be January 11, 2022 at 5:15 pm, via Webex video conferencing.

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Tab 2

Rule 504. Lawyer - Client.

(a) Definitions.

2	(a)(1) "Legal services" means the provision of:
3	(a)(1)(A) professional counsel, advice, direction or guidance on a legal
4	matter or question;
5	(a)(2)(B) professional representation on the client's behalf on a legal
6	matter; or
7	(a)(3)(C) referral to a lawyer.
8	(a)(2) "Client" means a person, public officer, corporation, association,
9	or other organization or entity, either public or private, who is rendered legal
10	services by a lawyer or who consults a lawyer or a lawyer referral service to
11	obtain legal services.
12	(a)(32) "Lawyer" means a person authorized, or reasonably believed by the
13	client to be authorized, to practice law in any state or nation.
14	(a)(3) "Licensed paralegal practitioner" means a person authorized by the
15	<u>Utah Supreme Court to provide legal services under the Supreme Court Rules</u>
16	of Professional Practice.
17	(a)(4) "Lawyer referral service" means an organization, either non-profit
18	or for-profit that is providing intake or screening services to clients or
19	prospective clients for the purpose of referring them to legal services.

20	_(a)(4) "Legal services" means the provision by a lawyer or lawyer referral
21	service of:
22	(a)(4)(A) professional counsel, advice, direction or guidance on a legal matter
23	or question;
24	(a)(4)(B) professional representation on the client's behalf on a legal matter; or
25	(a)(4)(C) referral to a lawyer.
26	(a)(5) "Lawyer's representative means a person or entity employed to assist the
27	lawyer in the rendition of legal services.
28	
29	(a)(6) "Client's representative" means a person or entity authorized by the
30	client to:
31	(a)(6)(A) obtain legal services for or on behalf of the client;
32	(a)(6)(B) act on advice rendered pursuant to legal services for or on
33	behalf of the client;
34	(a)(6)(C) provide assistance to the client that is reasonably necessary to
35	facilitate the client's confidential communications; or
36	(a)(6)(D) disclose, as an employee or agent of the client, confidential
37	information concerning a legal matter to the lawyer.
38	(a)(7) "Communication" includes:

39	(a)(7)(A) advice, direction or guidance given by the lawyer or, the
40	lawyer's representative or a lawyer referral service in the course of
41	providing legal services; and
42	(a)(7)(B) disclosures of the client and the client's representative to the
43	lawyer or, the lawyer's representative or a lawyer referral service
14	incidental to the client's legal services.
45	(a)(8) "Confidential communication" means a communication not intended to
46	be disclosed to third persons other than those to whom disclosure is in
1 7	furtherance of rendition of legal services to the client or to those reasonably
48	necessary for the transmission of the communication.
19	
50	(b) Statement of the Privilege. A client has a privilege to refuse to disclose, and to
51	prevent any other person from disclosing, confidential communications if:
52	(b)(1) the communications were made for the purpose or in the course of
53	obtaining or facilitating the rendition of legal services to the client; and
54	(b)(2) the communications were:
55	(b)(2)(A) between (i) the client or the client's representative and (ii) the
56	lawyer, the lawyer's representatives, or a lawyer representing others in

58	(b)(2)(B) between clients or clients' representatives as to matters of
59	common interest but only if each clients' lawyer or lawyer's
60	representatives was also present or included in the communications;
61	(b)(2)(C) between (i) the client or the client's representatives and (ii) a
62	lawyer referral service; or
63	(b)(2)(D) between (i) the client's lawyer or lawyer's representatives and
64	(ii) the client's lawyer referral service.
65	(c) Who May Claim the Privilege. The privilege may be claimed by:
66	(c)(1) the client;
67	(c)(2) the client's guardian or conservator;
68	(c)(3) the personal representative of a client who is deceased;
69	(c)(4) the successor, trustee, or similar representative of a client that was a
70	corporation, association, or other organization, whether or not in existence; and
71	(c)(5) the lawyer or the lawyer referral service on behalf of the client.
72	(d) Exceptions to the Privilege. Privilege does not apply in the following
73	circumstances:
74	(d)(1) Furtherance of the Crime or Fraud. If the services of the lawyer
75	were sought or obtained to enable or aid anyone to commit or plan to commit
76	what the client knew or reasonably should have known to be a crime or fraud;
77	(d)(2) Claimants through Same Deceased Client. As to a communication
78	relevant to an issue between parties who claim through the same deceased

79 client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction; 80 (d)(3) Breach of Duty by Lawyer or Client. As to a communication 81 82 relevant to an issue of breach of duty by the lawyer to the client; (d)(4) Document Attested by Lawyer. As to a communication relevant to an 83 issue concerning a document to which the lawyer was an attesting witness; or 84 (d)(5) Joint Clients. As to the communication relevant to a matter of 85 86 common interest between two or more clients if the communication was made by any of them to a lawyer retained or consulted in common, when offered in 87 an action between any of the clients. 88 89 (e) Extension of the Privilege to Certain Non-Lawyers. The privilege may also be claimed where legal services are provided to a client by a licensed paralegal 90 practitioner, a lawyer referral service, any other person or entity authorized in the 91 State of Utah to provide legal services, or a person or entity employed to assist such 92 non-lawyers in the rendition of legal services. 93

Effective November 1, 2018

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.

Rule 504. Lawyer - Client.

(a) Definitions.

2	(a)(1) "Legal services" means the provision of:
3	(a)(1)(A) professional counsel, advice, direction or guidance on a legal
4	matter or question;
5	(a)(2)(B) professional representation on the client's behalf on a legal
6	matter; or
7	(a)(3)(C) referral to a lawyer.
8	(a)(2) "Client" means a person, public officer, corporation, association,
9	or other organization or entity, either public or private, who is rendered legal
10	services by a lawyer or who consults a lawyer or a lawyer referral service to
11	obtain legal services.
12	(a)(32) "Lawyer" means a person authorized, or reasonably believed by the
13	client to be authorized, to practice law in any state or nation.
14	(a)(3) "Licensed paralegal practitioner" means a person authorized by the
15	<u>Utah Supreme Court to provide legal services under the Supreme Court Rules</u>
16	of Professional Practice.
17	(a)(4) "Lawyer referral service" means an organization, either non-profit
18	or for-profit that is providing intake or screening services to clients or
19	prospective clients for the purpose of referring them to legal services.

20	_(a)(4) "Legal services" means the provision by a lawyer or lawyer referral
21	service of:
22	(a)(4)(A) professional counsel, advice, direction or guidance on a legal matter
23	or question;
24	(a)(4)(B) professional representation on the client's behalf on a legal matter; or
25	(a)(4)(C) referral to a lawyer.
26	(a)(5) "Legal services provider" means a lawyer, a licensed paralegal
27	practitioner, a lawyer referral service, or any other person or entity authorized
28	in the State of Utah to provide legal services.
29	(a)(6) "Lawyer's Legal service provider's representative means a person or
30	entity employed to assist the lawyer legal services provider in the rendition of
31	legal services.
32	
33	(a)(6) "Client's representative" means a person or entity authorized by the
34	client to:
35	(a)(6)(A) obtain legal services for or on behalf of the client;
36	(a)(6)(B) act on advice rendered pursuant to legal services for or on
37	behalf of the client;
38	(a)(6)(C) provide assistance to the client that is reasonably necessary to
39	facilitate the client's confidential communications; or

40	(a)(6)(D) disclose, as an employee or agent of the client, confidential
41	information concerning a legal matter to the lawyer legal services
42	provider.
43	(a)(7) "Communication" includes:
44	(a)(7)(A) advice, direction or guidance given by the <u>lawyerlegal</u>
45	services provider or, the lawyer's legal services provider's representative
46	or a lawyer referral service in the course of providing legal services; and
47	(a)(7)(B) disclosures of the client and the client's representative to the
48	lawyerlegal services provider or, the lawyer's legal services provider's
49	representative or a lawyer referral service incidental to the client's legal
50	services.
51	(a)(8) "Confidential communication" means a communication not intended to
52	be disclosed to third persons other than those to whom disclosure is in
53	furtherance of rendition of legal services to the client or to those reasonably
54	necessary for the transmission of the communication.
55	
56	(b) Statement of the Privilege. A client has a privilege to refuse to disclose, and to
57	prevent any other person from disclosing, confidential communications if:
58	(b)(1) the communications were made for the purpose or in the course of
59	obtaining or facilitating the rendition of legal services to the client; and
60	(b)(2) the communications were:

61	(b)(2)(A) between (i) the client or the client's representative and (ii) the
62	lawyerlegal services provider, the lawyer's legal services provider's
63	representatives, or a lawyer legal services provider representing others in
64	matters of common interest; or
65	(b)(2)(B) between clients or clients' representatives as to matters of
66	common interest but only if each clients' lawyer legal services provider
67	or lawyer's legal services provider's representatives was also present or
68	included in the communications;
69	(b)(2)(C) between (i) the client or the client's representatives and (ii) a
70	lawyer referral service; or
71	(b)(2)(D) between (i) the client's lawyer or lawyer's representatives and
72	(ii) the client's lawyer referral service.
73	(c) Who May Claim the Privilege. The privilege may be claimed by:
74	(c)(1) the client;
75	(c)(2) the client's guardian or conservator;
76	(c)(3) the personal representative of a client who is deceased;
77	(c)(4) the successor, trustee, or similar representative of a client that was a
78	corporation, association, or other organization, whether or not in existence; and
79	(c)(5) the lawyer legal services provider or the lawyer referral service on
80	behalf of the client.

81	(d) Exceptions to the Privilege. Privilege does not apply in the following
82	circumstances:
83	(d)(1) Furtherance of the Crime or Fraud. If the services of the lawyer
84	<u>legal services provider</u> were sought or obtained to enable or aid anyone to
85	commit or plan to commit what the client knew or reasonably should have
86	known to be a crime or fraud;
87	(d)(2) Claimants through Same Deceased Client. As to a communication
88	relevant to an issue between parties who claim through the same deceased
89	client, regardless of whether the claims are by testate or intestate succession or
90	by inter vivos transaction;
91	(d)(3) Breach of Duty by Lawyer or Client. As to a communication
92	relevant to an issue of breach of duty by the lawyer-legal services provider to
93	the client;
94	(d)(4) Document Attested by Lawyer. As to a communication relevant to an
95	issue concerning a document to which the lawyer legal services provider was
96	an attesting witness; or
97	(d)(5) Joint Clients. As to the communication relevant to a matter of common
98	interest between two or more clients if the communication was made by any of them
99	to a lawyer legal services provider retained or consulted in common, when offered in

an action between any of the clients.

Effective November 1, 2018

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Rule 504. <u>LawyerLegal Professional</u> - Client.

(a) Definitions.

2	(a)(1) <u>"Legal services" means the provision of:</u>
3	(a)(1)(A) professional counsel, advice, direction or guidance on a legal
4	matter or question;
5	(a)(1)(B) professional representation on the client's behalf on a legal
6	matter; or
7	(a)(1)(C) referral to a lawyer.
8	(a)(2) "Client" means a person, public officer, corporation, association, or
9	other organization or entity, either public or private, who is rendered legal
10	services by a lawyer or who consults a lawyer or a lawyer referral service to
11	obtain legal services.
12	(a)(32) "Lawyer" means a person authorized, or reasonably believed by the
13	client to be authorized, to practice law in any state or nation.
14	(a)(43) "Legal professional" means a lawyer or any other person or entity
15	authorized, or reasonably believed by the client to be authorized, in the State of
16	Utah to provide legal services.
17	(a)(5)—"Lawyer referral service" means an organization, either non-
18	profit or for-profit₂ that is providing intake or screening services to
19	clients or prospective clients for the purpose of referring them to
20	legal services.

21	- (a)(4) "Legal services" means the provision by a lawyer or lawyer
22	referral service of:
23	(a)(4)(A) professional counsel, advice, direction or guidance on a legal
24	matter or question;
25	(a)(4)(B) professional representation on the client's behalf on a legal
26	matter; or
27	(a)(4)(C) referral to a lawyer.
28	(a)(5) (a)(6) "Lawyer's Legal professional's representative means a
29	person or entity employed to assist the <u>lawyer_legal professional</u> in the
30	rendition of legal services.
31	-
32	(a)(76) "Client's representative" means a person or entity authorized by
33	the client to:
34	(a)(76)(A) obtain legal services for or on behalf of the client;
35	(a)(76)(B) act on advice rendered pursuant to legal services for
36	or on behalf of the client;
37	(a)(76)(C) provide assistance to the client that is reasonably
38	necessary to facilitate the client's confidential communications; or

39	(a)(76)(D) disclose, as an employee or agent of the client,
40	confidential information concerning a legal matter to the
41	lawyerlegal professional.
42	(a)(87) "Communication" includes:
43	(a)(87)(A) advice, direction or guidance given by the lawyerlegal
44	professional, the lawyer's legal professional's representative, or a
45	lawyer referral service in the course of providing legal services;
46	and
47	(a)(87)(B) disclosures of the client and the client's representative
48	to the lawyerlegal professional, the lawyer's legal professional's
49	representative, or a lawyer referral service incidental to the
50	client's legal services.
51	(a)(98) "Confidential communication" means a communication not
52	intended to be disclosed to third persons other than those to whom
53	disclosure is in furtherance of rendition of legal services to the client or
54	to those reasonably necessary for the transmission of the
55	communication.
56	

57	(b) Statement of the Privilege. A client has a privilege to refuse
58	to disclose, and to prevent any other person from disclosing, confidential
59	communications <u>if</u> :
60	(b)(1) the communications were made for the purpose or in the course
61	of obtaining or facilitating the rendition of legal services to the client;
62	and
63	(b)(2) the communications were:
64	(b)(2)(A) between (i) the client or the client's representative and
65	(ii) the <u>lawyer</u> <u>legal professional</u> , the <u>lawyer</u> 's <u>legal professional</u> 's
66	representatives, or a lawyer legal professional representing others
67	in matters of common interest; or
68	(b)(2)(B) between clients or clients' representatives as to matters
69	of common interest but only if each clients' lawyer legal
70	<u>professional</u> or <u>lawyer's legal professional's</u> representatives was
71	also present or included in the communications;
72	(b)(2)(C) between (i) the client or the client's representatives and
73	(ii) a lawyer referral service; or

74	(b)(2)(D) between (i) the client's lawyer legal professional or
75	lawyer's legal prossional's representatives and (ii) the client's
76	lawyer referral service.
77	(c) Who May Claim the Privilege. The privilege may be claimed by:
78	(c)(1) the client;
79	(c)(2) the client's guardian or conservator;
80	(c)(3) the personal representative of a client who is deceased;
81	(c)(4) the successor, trustee, or similar representative of a client that
82	was a corporation, association, or other organization, whether or not in
83	existence; and
84	(c)(5) the <u>lawyer legal professional</u> or the lawyer referral service on
85	behalf of the client.
86	(d) Exceptions to the Privilege. Privilege does not apply in the following
87	circumstances:
88	(d)(1) Furtherance of the Crime or Fraud. If the services of the lawyer
89	<u>legal professional</u> were sought or obtained to enable or aid anyone to
90	commit or plan to commit what the client knew or reasonably should
91	have known to be a crime or fraud;

(d)(2) Claimants through Same Deceased Client. As to a 92 communication relevant to an issue between parties who claim through 93 the same deceased client, regardless of whether the claims are by testate 94 95 or intestate succession or by inter vivos transaction; 96 (d)(3) Breach of Duty by Lawyer or Client. As to a communication relevant to an issue of breach of duty by the lawyer legal professional to 97 the client: 98 (d)(4) Document Attested by Lawyer. As to a communication relevant 99 100 to an issue concerning a document to which the lawyer legal 101 professional was an attesting witness; or (d)(5) **Joint Clients.** As to the communication relevant to a matter of 102 common interest between two or more clients if the communication was made 103 by any of them to a lawyer legal professional retained or consulted in 104 common, when offered in an action between any of the clients. 105

Effective November 1, 2018

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another lawyer, even if privileged confidential communications are made in the process of that referral.

2021 Advisory Committee Note. Licensed paralegal practitioners and those approved to provide legal services un Utah's regulatory sandbox are among those considered "legal professionals" under this rule.