

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 <ul style="list-style-type: none"><i>November 9, 2021</i>	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:

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

Rule Status:

URE 106 – Under consideration by Supreme Court
URE 404 – Under consideration by Supreme Court
URE 412 – Under consideration by Supreme Court
URE 504 – Returned to Committee from Supreme Court
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

<u>MEMBERS PRESENT</u>	<u>MEMBERS EXCUSED</u>	<u>GUESTS</u>	<u>STAFF</u>
Teneille Brown Sarah Carlquist Tony Graf Ed Havas Hon. Linda Jones Jennifer Parrish 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	Deborah Bulkeley Chris Hogle Minhvan Brimhall	Bethany Warr Debbie Hill Keri Sargent AOC Mathew Morrise Annie Taliaferro Jacqueline Carlton	Keisa Williams Gage Hansen

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.

(a)(1) “Legal services” means the provision of:

(a)(1)(A) professional counsel, advice, direction or guidance on a legal matter or question;

(a)(2)(B) professional representation on the client’s behalf on a legal matter; or

(a)(3)(C) referral to a lawyer.

(a)(2) "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)(32) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(a)(3) “Licensed paralegal practitioner” means a person authorized by the Utah Supreme Court to provide legal services under the Supreme Court Rules of Professional Practice.

(a)(4) “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)(4) "Legal services" means the provision by a lawyer or lawyer referral service of:~~

~~(a)(4)(A) professional counsel, advice, direction or guidance on a legal matter or question;~~

~~(a)(4)(B) professional representation on the client's behalf on a legal matter; or~~

~~(a)(4)(C) referral to a lawyer.~~

(a)(5) "Lawyer's representative means a person or entity employed to assist the lawyer in the rendition of legal services.

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(a)(6) "Client's representative" means a person or entity authorized by the client to:

(a)(6)(A) obtain legal services for or on behalf of the client;

(a)(6)(B) act on advice rendered pursuant to legal services for or on behalf of the client;

(a)(6)(C) provide assistance to the client that is reasonably necessary to facilitate the client's confidential communications; or

(a)(6)(D) disclose, as an employee or agent of the client, confidential information concerning a legal matter to the lawyer.

(a)(7) "Communication" includes:

(a)(7)(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)(7)(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)(8) "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;

~~(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

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

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

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

(d)(2) Claimants through Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased

client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

(d)(3) Breach of Duty by Lawyer or Client. As to a communication 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 issue concerning a document to which the lawyer was an attesting witness; or

(d)(5) Joint Clients. As to the communication relevant to a matter of 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 an action between any of the clients.

(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 practitioner, a lawyer referral service, any other person or entity authorized in the State of Utah to provide legal services, or a person or entity employed to assist such non-lawyers in the rendition of legal services.

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.

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(a)(2) "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)(32) "Lawyer" means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(a)(3) “Licensed paralegal practitioner” means a person authorized by the Utah Supreme Court to provide legal services under the Supreme Court Rules of Professional Practice.

(a)(4) “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)(4) “Legal services” means the provision by a lawyer or lawyer referral service of:~~

~~(a)(4)(A) professional counsel, advice, direction or guidance on a legal matter or question;~~

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~~(a)(4)(C) referral to a lawyer.~~

(a)(5) “Legal services provider” means a lawyer, a licensed paralegal practitioner, a lawyer referral service, or any other person or entity authorized in the State of Utah to provide legal services.

(a)(6) “Lawyer’s Legal service provider’s representative” means a person or entity employed to assist the lawyer legal services provider in the rendition of legal services.

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(a)(6) “Client’s representative” means a person or entity authorized by the client to:

(a)(6)(A) obtain legal services for or on behalf of the client;

(a)(6)(B) act on advice rendered pursuant to legal services for or on behalf of the client;

(a)(6)(C) provide assistance to the client that is reasonably necessary to facilitate the client’s confidential communications; or

(a)(6)(D) disclose, as an employee or agent of the client, confidential information concerning a legal matter to the lawyer legal services provider.

(a)(7) "Communication" includes:

(a)(7)(A) advice, direction or guidance given by the lawyer legal services provider or, the lawyer's legal services provider's representative ~~or a lawyer referral service~~ in the course of providing legal services; and

(a)(7)(B) disclosures of the client and the client's representative to the lawyer legal services provider or, the lawyer's legal services provider's representative ~~or a lawyer referral service~~ incidental to the client's legal services.

(a)(8) "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:

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

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

(c)(1) the client;

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(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

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

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(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 services provider to the client;

(d)(4) Document Attested by Lawyer. As to a communication relevant to an issue concerning a document to which the ~~lawyer~~ legal services provider was an attesting witness; or

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

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(a)(2) “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)(32) “Lawyer” means a person authorized, or reasonably believed by the client to be authorized, to practice law in any state or nation.

(a)(43) “Legal professional” means a lawyer or any other person or entity authorized, or reasonably believed by the client to be authorized, in the State of Utah to provide legal services.

(a)(5)—“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)(4) “Legal services” means the provision by a lawyer or lawyer referral service of:~~

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

(a)(87) "Communication" includes:

(a)(87)(A) advice, direction or guidance given by the lawyer legal professional, the lawyer's legal professional'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 legal professional, the lawyer's legal professional's representative, or a lawyer referral service incidental to the client's legal services.

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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.