

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

**MEETING MINUTES
April 12th, 2022
5:15 p.m.-7:15 p.m.
Via Webex**

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

1. WELCOME, INTRODUCTION OF NEW MEMBER, AND APPROVAL OF MINUTES:

Chris Hogle welcomed everyone to the meeting and allowed Nicole Salazar-Hall to run the remainder of the meeting due to his need to attend to a client-related matter. Keisa Williams introduced Bryson King, who will be joining the group and taking over Ms. Williams' role. Ms. Salazar-Hall asked for any corrections to the February 8, 2022 meeting minutes. ***Upon no changes, it was moved that the minutes be approved, and the motion was seconded and adopted by unanimous vote.***

2. URE 412: Back from Public Comment

Ms. Salazar-Hall indicated that the public comments on URE 412 were all positive. Ms. Salazar-Hall motioned to recommend the rule as amended to the Supreme Court. John Nielson and Jennifer Parrish seconded. The Motion carried.

Ms. Salazar-Hall asked Judge Michael Leavitt to clarify on how this rule applies to juvenile court

delinquency proceedings. Judge Leavitt emphasized there are many rules of evidence that could use clarification on how the rules apply (if at all) to juvenile court proceedings. Judge Leavitt suggesting forming a sub-committee to review the application of the rules in the juvenile court system. Mr. Hogle agreed this would be a good idea.

Judge Linda Jones suggested this committee can include individuals in the juvenile court rules committee. Mr. King agreed to communicate this message to the juvenile rules committee. Ms. Salazar-Hall asked Mr. King to add this to the next meeting's agenda.

3. URE 404/S.J.R.2: Did not pass

Ms. Salazar-Hall updated the committee on URE 404. The Legislature adopted no amendment to the rule during its last session. The rule and the URE 404's subcommittee's presentation is under consideration by the Supreme Court. Ms. Salazar-Hall suggested letting the rule sit with the Supreme Court until further notice. ***After some discussion, Mr. Nielson moved the Committee to sit patiently and wait. Ms. Carlquist seconded the motion. Upon no objection, the motion passed unanimously.***

4. URE 409/ H.J.R. 13: Passed, eff. Mat 4, 2022

Ms. Salazar-Hall updated the committee on URE 409 and asked the committee if there are any proposed changes to the rule as amended by the Legislature. Edward Havas strongly encouraged the committee to not recommend any changes at this point and the committee members concurred.

5. URE 506

Ms. Carlquist provided an update to the committee on behalf of the URE 506 subcommittee. A new exception was created as section (d)(2) of the rule. Judge Jones was commended for her hard work restructuring the rule. Judge Leavitt stated he would like to change his vote on the standard by which the (d)(2) exception must be proved to the preponderance of the evidence standard.

Mr. Hogle asked a question about the word "communication" in (d)(2)(C). Ms. Carlquist responded—she clarified that communication in this instance is being used as an umbrella term. Mr. Hogle suggested changing the word "communications" to "statements." Judge Linda Jones clarified that a Judge has to make an in-camera review for the items in (d)(1) and (d)(2). Ms. Carlquist suggested using the term "information" in lieu of "communication." Matt Hansen cautioned against making this rule too broad because it will make it impossible for a Judge to make this work. Ms. Carlquist disagreed and expressed it is in line with the language of the rule. Mr. Hogle expressed concern that this information is reliable. Mr. Hansen clarified this information is not information that the prosecution has or is relying on.

Judge Teresa Welch asked whether the standard is consistent with controlling case law and

recalled Judge Leavitt stating that case law is more consistent with the preponderance of the evidence standard. Ms. Carlquist clarified that the standard has been reasonable certainty (*State v. Blake*). The Supreme Court's opinion in *State v. Bell* indicated that that this standard might be too stringent, but it did not ultimately decide on this issue. Judge Leavitt clarified that civil cases equate reasonable certainty to preponderance of the evidence standard. He explained that as a Judge this standard is easier to articulate and apply. Judge David Williams agreed that preponderance of the evidence is easier to articulate and apply. Judge Jones clarified that when Bell was decided, subsection (d)(2) did not exist.

After further discussion and questions about the newest revisions, Ms. Salazar-Hall called for a new vote from the committee. The results of the new vote were as follows: 10 in favor of a preponderance of the evidence standard, and 2 in favor of reasonable likelihood standard.

Mr. Neilson and Ms. Carlquist volunteered to write the majority and minority reports, respectively.

Ms. Salazar-Hall motioned to send what we have to the Supreme Court for further review. Tony Garf and Mr. Nielson seconded. The motion carried.

Adjourn:

With no further items for discussion, Ms. Salazar-Hall moved to adjourn the meeting Ms. Carlquist seconded, Judge Richard Mckelvie third. The next meeting will be June 14, 2022, at 5:15 pm, via Webex video conferencing.