

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

**MEETING MINUTES
December 13th, 2022
5:15 p.m.-7:00 p.m.
Via Webex**

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

1. WELCOME AND APPROVAL OF MINUTES

Due to the partial absence of Chris Hogle, Nicole Salazar-Hall chaired the meeting and welcomed everyone. After one change to the November minutes, Adam Alba moved to approve the minutes. Tony Graf seconded. The motion carried.

2. UPDATE ON RULE 506

Sarah Carlquist updated the committee on Rule 506. The Appellate Rules Committee does not want to do anything until the Supreme Court requests action. The Supreme Court will potentially address this issue, on the merits, in an upcoming case. The question is whether this committee wants to continue to hold 506 pending the Appellate Rules Committee or if this committee should send it up to the Supreme Court.

The administrative rules of judicial procedure have been amended making express that if records are sealed at the trial court level, they remain sealed at the appellate court level, but the appeals court can unseal them upon a proper motion.

Ms. Salazar-Hall suggested sending the Rule 506 draft with a note that says we held off sending

this pending the outcome of the potentially applicable Supreme Court case. Judge Michael Leavitt agreed that the Rule and memorandum should be sent to the Supreme Court. Debora Bulkeley expressed her agreement. Mr. Graf also agreed.

Ms. Carlquist suggested flagging the potential issues with Rule 11 and the potential issues on appeal.

Ms. Bulkeley motioned to send Rule 506 to the Supreme Court with a quick memorandum on its interplay with Rule 11. Judge Leavitt seconded. The motion carried.

3. PRESUMPTION OF ADMISSIBILITY OF GOOGLE EARTH PHOTOS – FLORIDA STATUTE 90.2035

Ed Havas discussed a court of appeals decision overturned based on google earth photos.

It is commonplace to rely upon google earth and other similar web-based imagery and it allows the court to take judicial notice as long as it is from a recognized and accepted source and the date from the image is shown. In Florida, a rule permitting courts to take judicial notice of this evidence passed with unanimous bipartisan support. Mr. Havas stated that this seems like a good thing to add to our rules to avoid confusion on the introduction of such evidence in Utah. Mr. Havas suggested creating a stand-alone rule.

Several members of the group raised concerns regarding the scope of this potential rule. Ms. Carlquist added that Rule 201 may already speak to this issue. Mr. Alba suggested gauging the interest of the Court. Judge David Williams volunteered to raise it with the Board of District Court Judges. Judge Leavitt similarly volunteered to raise it with the Juvenile Rules Committee.

Ms. Salazar-Hall suggested taking a poll from this committee to determine if this committee should further explore this potential rule. A vote was taken, and the results were as follows: six members were in favor of exploring this at least on a cursory level and polling the Judges to see if this might be necessary. Three members were in favor of not moving. Three members abstained from voting.

Judge Leavitt made a motion for Judge Williams and Judge Leavitt to raise the matter with their respective boards of judges and report back. Ms. Bulkeley seconded. The motion carried. Judges Leavitt and Williams will report back during the committee's February 21, 2023 meeting.

4. JUVENILE AMENDMENTS TO RULES

Judge Leavitt led this discussion.

This committee recommended and the Supreme Court adopted an amendment to Rule 412. This created some confusion as to rules that don't mention juvenile proceedings. Judge Leavitt prepared proposed amendments (Tab 3 to the agenda) and met with the Rules of Juvenile Procedure Committee. Judge Leavitt suggested punting the remaining issues to the Rules of Juvenile Procedure Committee.

Chris Hogle suggested that this committee review Tab 3 and come prepared with questions at the next meeting.

Mr. Hogle moved to table agenda item No. 4 until the January 10th, 2023, meeting. Dallas Young Seconded. The motion carried.

ADJOURN:

With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be January 10, 2023, at 5:15 pm, via Webex video conferencing.