



Utah Supreme Court Rules of Evidence Committee

Meeting Agenda

Chris Hogle, Chair

Location: WebEx Meeting:
<https://utcourts.webex.com/meet/brysonk>

Date: December 13, 2022

Time: 5:15 p.m. - 7:15 p.m. MST

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|--|-------|-----------------|
| Action: Welcome and approve October 11 th , 2022 Minutes | Tab 1 | Chris Hogle |
| Discussion: Update on Rule 506 | | Sarah Carlquist |
| Discussion: Presumption of admissibility of Google Earth photos – Florida Statute 90.2035 | Tab 2 | Edward Havas |
| Discussion: Juvenile Amendments, Rules 101, 1101, 412, and 615 | Tab 3 | Judge Leavitt |

<https://www.utcourts.gov/utc/rules-evidence/>

Meeting Schedule:

January 10, 2023

February 14, 2023

April 11, 2023

June 13, 2023

October 10, 2023

November 14, 2023

Rule Status:

URE 106 - Under consideration by Supreme Court

URE 404 - Awaiting advice from Supreme Court

URE 506 - On remand from Supreme Court for Committee discussion

URE 507.1 - Awaiting DoH guidelines

Tab 1

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

MEETING MINUTES

DRAFT

November 8th, 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 John Nielsen Hon. Michael Leavitt Ed Havas Jacqueline Carlton Deborah Bulkeley Nicole Salazar-Hall Matthew Hansen Hon. Richard McKelvie Jennifer Parrish Hon. Vernice Trease Ryan McBride Hon. Linda Jones Tony Graf | Minhvan Brimhall Hon. Teresa Welch Dallas Young Hon. David Williams Adam Alba Teneille Brown Melinda Bowen Adam Crayk Sam Knight | | Bryson King Angelica Juarez |

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

Chris Hogle introduced Ryan McBride as a new member of the group and noted that we'd be sending off John Nielsen. Judge Michael Leavitt moved to approve the minutes. Nicole Salazar-Hall seconded. The motion was carried.

2. URE Rule 506

Sarah Carlquist updated the committee on whether the Appellate Procedure Committee would take the lead on the privileged and concealed records aspect of Rule 11. The Appellate Procedure Committee indicated that they would be taking the lead on this.

There was discussion as to when our Committee's work on Rule 11 should be sent up to the Supreme Court for approval, given that the Appellate Procedure Committee is also working on this rule.

Ultimately, Jennifer Parrish moved to send this Committee's report and recommendations to the Supreme Court, along with a note indicating that the Appellate Procedure Committee is dealing with this

rule as it pertains to the record on appeal. The note will also indicate that this Committee suggests publishing any changes by this Committee or the Appellate Procedure Committee together.

Judge Richard McKelvie seconded.

The motion carries.

3. Juvenile Rules Applicability to URE

Judge Leavitt updated the Committee on the Juvenile Rule Committee meeting last Friday. The Juvenile Rule Committee discussed whether our Committee should standardize references to criminal proceedings to include juvenile criminal proceedings.

Judge Leavitt mentioned that Rule 404(c) for example, may be applicable to juvenile proceedings. However, the Juvenile Rule Committee was concerned that not all rules should be applicable to juvenile proceedings. Judge Leavitt suggested leaving that to the Juvenile Committee.

Mr. McBride believes Rule 43 already speaks to this issue. Judge Leavitt mentioned that rules 412 and 416 specifically mention juvenile delinquency proceedings.

After some discussion about whether the constitution or other statutes offer guidance on this issue, Judge Leavitt mentioned he would go back to the Juvenile Committee to see whether additional help from this Committee is needed.

4. Acknowledgement and send off to John Nielsen for Service on Committee

Mr. Hogle thanked and acknowledged John Nielsen's commitment and contribution to the Committee. Mr. Nielsen expressed his gratitude to the Committee and wished everyone well.

Adjourn:

With no further items to discuss, Mr. Hogle adjourned the meeting.

Tab 2

Select Year: 2022 ▼ Go

The 2022 Florida Statutes

[Title VII](#)
EVIDENCE

[Chapter 90](#)
EVIDENCE CODE

[View Entire Chapter](#)

90.2035 Judicial notice of information taken from web mapping services, global satellite imaging sites, or Internet mapping tools.—

(1)(a) Upon request of a party, a court may take judicial notice of an image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool, if such image, map, location, distance, calculation, or other information indicates the date on which the information was created.

(b) A party intending to offer such information in evidence at trial or at a hearing must file notice of such intent within a reasonable time or as defined by court order. The notice must include a copy of the information and specify the Internet address or pathway where such information may be accessed and inspected.

(2)(a) A party may object to the court taking judicial notice of the image, map, location, distance, calculation, or other information taken from a widely accepted web mapping service, global satellite imaging site, or Internet mapping tool within a reasonable time or as defined by court order.

(b) In civil cases, there is a rebuttable presumption that information sought to be judicially noticed under this section should be judicially noticed. The rebuttable presumption may be overcome if the court finds by the greater weight of the evidence that the information does not fairly and accurately portray what it is being offered to prove or that it otherwise should not be admitted into evidence under the Florida Evidence Code.

(c) If the court overrules the objection, the court must take judicial notice of the information and admit the information into evidence.

(3) In criminal cases, the court must instruct the jury that the jury may or may not accept the noticed facts as conclusive.

(4) This section does not affect, expand, or limit standards for any matters that may otherwise be judicially noticed.

History.—s. 1, ch. 2022-100.

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Tab 3

Rule 101. Scope; Definitions.

(a) Scope. These rules apply to proceedings in Utah courts. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in [Rule 1101](#).

(b) Definitions. In these rules:

(b)(1) “civil case” means a civil action or proceeding, including all juvenile court cases or proceedings that are not delinquency proceedings non-delinquency proceedings;

(b)(2) “criminal case” includes a criminal proceeding and a juvenile court delinquency case or proceeding;

(b)(3) “public office” includes a public agency;

(b)(4) “record” includes a memorandum, report, or data compilation;

(b)(5) a reference to any kind of written material or any other medium includes electronically stored information;

(b)(6) “defendant” includes a minor in a juvenile delinquency case or proceeding accused of committing an act that would be a crime if committed by an adult;

(b)(7) “conviction” includes an adjudication in a juvenile delinquency case or proceeding.

(c) To the extent the above definitions and the Utah Rules of Juvenile Procedure conflict, the provisions of the Utah Rules of Juvenile Procedure shall govern.

Rule 1101. Applicability of Rules.

Effective: 5/1/2022

(a) Proceedings Generally. These rules apply to all actions and proceedings in the courts of this state except as otherwise provided in subsections (c) and (d). They apply generally to civil actions and proceedings, criminal cases and contempt proceedings except those in which the court may act summarily, and all juvenile court proceedings unless stated otherwise in the Utah Rules of Juvenile Procedure.

(b) Rule of Privilege. The rule with respect to privileges applies at all stages of all actions, cases and proceedings.

(c) Rules Inapplicable. The rules (other than with respect to privileges) do not apply in the following situations:

(c)(1) Preliminary Questions of Fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under URE 104.

(c)(2) Grand Jury. Proceedings before grand juries.

(c)(3) Revoking Probation. Proceedings for revoking probation, unless the court for good cause otherwise orders.

(c)(4) Miscellaneous Proceedings. Proceedings for extradition or rendition; sentencing; issuance of warrants for arrest, criminal summonses, and search warrants; and proceedings with respect to release on bail or otherwise.

(d) Reliable Hearsay in Criminal Preliminary Examinations. In a criminal preliminary examination, reliable hearsay shall be admissible as provided under URE 1102.

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Rule 412. Admissibility of Victim's Sexual Behavior or Predisposition.

Effective: 5/1/2017

(a) Prohibited Uses. The following evidence is not admissible in a criminal~~-or juvenile delinquency~~ proceedings involving alleged sexual misconduct:

(a)(1) evidence offered to prove that a victim engaged in other sexual behavior; or

(a)(2) evidence offered to prove a victim's sexual predisposition.

(b) Exceptions. The court may admit the following evidence if the evidence is otherwise admissible under these rules:

(b)(1) evidence of specific instances of a victim's sexual behavior, if offered to prove that someone other than the defendant was the source of semen, injury, or other physical evidence;

(b)(2) evidence of specific instances of a victim's sexual behavior with respect to the person accused of the sexual misconduct, if offered by the defendant to prove consent or if offered by the prosecutor; or

(b)(3) evidence whose exclusion would violate the defendant's constitutional rights.

(c) Procedure to Determine Admissibility.

(c)(1) Motion. If a party intends to offer evidence under [Rule 412\(b\)](#), the party must:

(c)(1)(A) file a motion that specifically describes the evidence and states the purpose for which it is to be offered;

(c)(1)(B) do so at least 14 days before trial unless the court, for good cause, sets a different time; and

(c)(1)(C) serve the motion on all parties.

(c)(2) Notice to the Victim. The prosecutor shall timely notify the victim or, when appropriate, the victim's guardian or representative.

(c)(3) Hearing. Before admitting evidence under this rule, the court must conduct an in camera hearing and give the victim and parties a right to attend and be heard. Unless the court orders otherwise, the motion, related materials, and the record of the hearing are classified as protected.

(d) Definition of "Victim." In this rule, "victim" includes an alleged victim.

Rule 615. Excluding Witnesses.

At a party's request, the court must order witnesses excluded so that they cannot hear other witnesses' testimony. Or the court may do so on its own. But this rule does not authorize excluding:

(a) a party who is a natural person;

(b) an officer or employee of a party that is not a natural person, after being designated as the party's representative by its attorney;

(c) a person whose presence a party shows to be essential to presenting the party's claim or defense;

(d) a victim in a criminal~~-or juvenile delinquency~~ proceeding where the prosecutor agrees with the victim's presence;

(e) a victim counselor while the victim is present unless the defendant establishes that the counselor is a material witness in that criminal proceeding ~~or juvenile delinquency proceeding~~; or

(f) a person authorized by statute to be present.