

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

MEETING MINUTES

**February 13, 2024
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 David Billings Dallas Young Ed Havas Tenielle Brown Hon. Michael Leavitt Ryan McBride Hon. Richard McKelvie Hon. Linda Jones Hon. Vernice Trease Rachel Sykes	Benjamin Miller Melinda Bowen Nicole Salazar-Hall Adam Alba Tony Graf Matthew Hansen Hon. David Williams	Jacqueline Carlton	Jace Willard Angelica Juarez

1. WELCOME AND APPROVAL OF MINUTES

Chris Hogle welcomed everyone to the meeting. After waiting for quorum to begin the meeting, David Billings moved for approval of the November meeting minutes. Ryan McBride seconded. The motion carried.

2. URE 106 proposed amendments out for public comment; URE 506 Amendments given final approval (effective 5/1/24); URE 1101 per Committee’s recommendation, not adopted

Mr. Hogle provided a brief update on Rules 106, 506 and 1101.

3. URE 702 Redline

Tenielle Brown gave an update on federal Rule 702. Prof. Brown provided background on why the federal rule was revised in the criminal context regarding forensic experts.

Sarah Carlquist brought up the issue of “blind experts”—experts who haven’t looked at anything to do with the facts of the case, just testifying generally about methodology. Dallas

Young added that he has also observed this issue. Judge Vernice Trease noted that our advisory committee note to Rule 702 allows this. She has had cases where parties present blind experts that present principles relative to what they believe the issues are without addressing the facts of the case.

Mr. Hogle asked if any of the above discussed principles motivated changes to the new rule 702—Prof. Brown said no.

Ed Havas offered some additional insight as to whether we should adopt the federal rule 702 amendment. He was on the committee when Rule 702 was amended. He noted that the amendment to 702 was specifically designed not to mimic the federal rule because they didn't want to recreate *Daubert* in Utah. He noted that the rule was designed to have a very different analytical framework under the state rule. The Utah rule was not intended to make admission of expert testimony more difficult. In fact, it was intentionally designed to be a low bar. Mr. Havas is afraid that adopting a "preponderance of evidence" standard would turn the current Utah approach on its head because it would make it more difficult to admit expert testimony. Judge Linda Jones was also on the committee when Rule 702 was last amended. She echoed the sentiments expressed by Mr. Havas.

The group discussed that if we decide to adopt this preponderance language from the federal rule, we are potentially altering the threshold language in the current Utah rule. The group agreed that the new preponderance language would be inconsistent with the threshold showing because preponderance of the evidence would be a higher burden of proof than the threshold language.

The group agreed that we should investigate these issues further and touch base with the Supreme Court.

Mr. Hogle suggested the formation of a subcommittee. Mr. Young agreed and volunteered for the committee. Prof. Brown agreed to be on this subcommittee and to chair it. Mr. McBride and Mr. Havas also volunteered. Mr. Hogle said we have to report to the Supreme Court and tell them what we think we need to do if anything in response to the federal rule change. Whatever our recommendation is, we should back it up.

4. URE 615 Redline

There has been another federal rule change to Rule 615. Mr. Hogle suggested forming a subcommittee.

Mr. Billings agreed to volunteer for the subcommittee, as did Ms. Carlquist.

Given that the group was a little lighter at this meeting, Mr. Hogle encouraged Jace Willard to review past committee meeting minutes re attendance and to report back to Chris.

ADJOURN:

Mr. Hogle moved to adjourn.

With no further items to discuss, Mr. Hogle adjourned the meeting. The next meeting will be April 9th, at 5:15 pm, via Webex video conferencing.

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