

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

MEETING MINUTES

**April 9th, 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 Nicole Salazar-Hall Tony Graf Matthew Hansen Adam Alba Benjamin Miller Rachel Sykes David Billings Dallas Young Prof. Teneille Brown Hon. Michael Leavitt Ryan McBride Hon. Richard McKelvie Hon. Vernice Trease	Hon. David Williams Sarah Carlquist Ed Havas Hon. Linda Jones		Jace Willard

1. WELCOME AND APPROVAL OF MINUTES

Chris Hogle welcomed everyone to the meeting. After waiting for quorum to begin the meeting, the minutes from the last meeting were amended to move Rachel Sykes from the excused to the present column. Professor Teneille Brown moved for approval of the November meeting minutes. Judge Richard McKelvie seconded. The motion carried.

2. URE Rule 615 Redlines

David Billings filled in for Sarah Carlquist and discussed Rule 615. The subcommittee drafted three redline versions for the group's review and feedback.

The group had a discussion about potential sanctions under this rule and the observed extent of rule violations in Utah.

Some members advocated for the third option of the rule drafted by the subcommittee, which is the version that most closely resembles the federal version, while others advocated for the second option. No one urged adoption of the first option.

Mr. Hogle suggested creating a hybrid between the second and third options, where we start with the language of the second option and add the language “other than counsel or a pro se party” to replace the “in the case language” in line 5.

The decision was made to turn it back over to the subcommittee to create a draft that incorporates the consensus items.

3. URE Rule 106 Public Comments

We received some public comments back on Rule 106. The group discussed one particular comment which came from the AG’s office. The group discussed whether the proposed changes to the rule already address the concerns raised in the public comments.

Mr. Hogle asked the group if, based on the public comment received, we should revisit the proposed changes to the rule. Matthew Hansen, Tony Graf, Ryan McBride, and Judge Leavitt said that the proposed changes should be revisited. Mr. Billings stated that he was not in favor of altering any of the proposed language but brought up that their concerns could be addressed in an advisory committee note. Specifically, Mr. Billings said that the Federal Advisory committee note would be sufficient to address the concerns.

Mr. Billings moved to strike the current proposed advisory committee note and replace it with the Federal advisory committee note. However, this motion was not seconded, so no vote was taken.

Mr. Hogle then suggested that we send this back up to the Supreme Court justices saying we've considered the public comments, but we've addressed the points satisfactorily and we think nothing ought to change in the rule. Dallas Young motioned for the above course of action and Ms. Sykes seconded. Mr. Hansen, Mr. Graf, and Mr. McBride voted nay on the motion. Judge Vernice Trease abstained from the vote. Judge Leavitt decided to support the motion. The motion carried with a majority of the group in favor.

4. URE 702

Professor Brown briefed the group on the developments relating to URE 702. The Rule 702 subcommittee was asked to look at the change to Federal Rule 702 and report on whether we should recommend making conforming changes to Utah Rule 702.

Professor Brown presented a memo from the Rule 702 subcommittee recommending that the rule not be amended to follow amendments made to FRE 702. The Committee agreed and voted to present the substance of the memo to the Supreme Court in support of making no changes to Rule 702. Professor Brown will present an amended memo with supporting citations at the June meeting.

5. HJR013

Jace Willard told the group about a new legislative amendment. Mr. Willard informed the group

that, under HJR013, the legislature has amended Rule 1102 of the Utah Rules of Evidence. This legislative amendment was made without consulting the Rules of Evidence Committee. There has been no direction given from the Supreme Court about what they would like this committee to do with this.

The group discussed the implications of the legislative amendment and whether this committee should, on its own accord, suggest any changes.

Specifically, the group discussed whether this committee should add an advisory committee note that says that “this amendment was passed by joint resolution of the legislature.” Mr. Willard will research whether such statements have been included in advisory committee notes to other rules modified by the Legislature.

For the time being, this discussion was tabled for the next meeting.

ADJOURN:

With no further items to discuss, Mr. Hogle adjourned the meeting. The next meeting will be June 11, at 5:15 pm, via Webex video conferencing.

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