

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

**MEETING MINUTES**

**November 12th, 2024  
5:15 p.m.-6:40 p.m.  
Via Webex**

<u>MEMBERS PRESENT</u>	<u>MEMBERS EXCUSED</u>	<u>GUESTS</u>	<u>STAFF</u>
Nicole Salazar-Hall Sarah Carlquist David Billings Teneille Brown Tony Graf Clint Heiner Hon. Linda Jones Hon. Michael Leavitt Scott Lythgoe Ryan McBride Hon. Richard McKelvie Adam Merrill Benjamin Miller Andres Morelli Rachel Sykes Dallas Young	Hon. David Williams		Jace Willard

**1. Welcome, Approval of Minutes, and Introductions to New Member**

Nicole Salazar-Hall welcomed everyone to the meeting. Scott Lythgoe moved for approval of the October meeting minutes. Sarah Carlquist seconded. The motion carried. Ms. Salazar-Hall welcomed new member Adam Merrill to the Committee and invited him and all Committee members present to introduce themselves.

**2. Update on URE Rules 702, 615, and 1102**

Ms. Salazar-Hall noted that the Supreme Court adopted the Committee's recommendation to take no action on URE 702, despite recent amendments to FRE 702. She further noted that the Court made final the Committee's proposed changes to URE 615, which took effect on November 1, 2024. The Court also approved the Committee's proposal to add a reference to URE 1102 to the legislation amending that rule. That proposed change is presently out for

public comment.

### **3. URE Rule 107 and Rule 1006 Subcommittee Formed**

The Committee considered several recent amendments to the federal rules and whether similar changes should be made to the Utah rules. The first rule considered was a new draft URE 107 modeled after new FRE 107. Judge Leavitt was generally supportive of the new rule, but suggested that the language “when practicable” in subparagraph (c) should be changed to something more definite. Others agreed. Ms. Carlquist, Mr. Young, and Professor Brown all spoke in favor of making any illustrative aids used at trial part of the record. Judge Jones suggested it might be helpful to consider UCJA Rule 4-206’s provisions regarding court custody of offered exhibits. Following discussion, a subcommittee was formed to consider draft URE 107 more closely. The subcommittee members include Judge Jones, Ms. Sykes, Professor Brown, and Mr. Lythgoe. Ms. Salazar-Hall invited the subcommittee members to select their own chair. As indicated below, this subcommittee will also consider potential changes to Rule 1006.

### **4. URE Rule 613 Redlines Recommended**

The Committee next considered draft amendments to URE 613(b) in line with recent federal amendments regarding extrinsic evidence of a witness’s prior inconsistent statement. Ms. Salazar-Hall and Ms. Sykes noted that the provision doesn’t seem to come up very often in civil cases. Mr. Heiner said it is frequently an issue in criminal cases, where victims or witnesses are not given a prior chance to explain or deny prior inconsistent statements. Mr. McBride, Mr. Young, Judge Leavitt, and Mr. Heiner all expressed support for the draft amendments. Ms. Carlquist moved to recommend adoption of the amendments. Mr. McBride seconded. The motion carried.

### **5. URE Rule 801 Redlines on Hold**

Potential changes to URE 801(d)(2) were also considered in light of recent changes to the corresponding federal provision. Ms. Salazar-Hall pointed out that the changes added to an existing provision in the federal rule that has not been adopted in the Utah version. Professor Merrill explained that the federal provision arises out of a Supreme Court case, *Bourjaily v. U.S.*, 483 U.S. 171 (1987), and concerns using coconspirator hearsay statements to bootstrap foundation for the statements as to the existence of a conspiracy. Given the absence in URE 801(d)(2) of the existing (pre-amendment) provision regarding bootstrapping in the federal version, Ms. Salazar-Hall suggested that it might be prudent to await the development of more federal law on the subject before pursuing changes to this rule. She called for a vote as to whether the Committee preferred putting the matter on hold or forming a subcommittee to consider adoption of the federal changes. A majority of those who voted supported waiting to see how federal caselaw develops.

### **6. URE Rule 804 Subcommittee Formed**

The Committee also considered potential changes to URE 804(b)(3)(B)’s exception to the

hearsay rule for statements tending to expose the declarant to criminal liability. Mr. Miller expressed support for the amendment as providing helpful guidance. Judge Leavitt countered that it might limit counsel's arguments regarding factors indicative of trustworthiness. Mr. McBride said the amendment calling for consideration of "the totality of the circumstances under which [the statement] was made and any evidence that supports or undermines it" seems redundant because the rule already requires the court to consider whether there are "corroborating circumstances that clearly indicate its trustworthiness." Professor Merrill suggested that some courts will only look at the circumstances under which the statement was made. Following discussion, a subcommittee was formed to consider the matter more closely. The members of the subcommittee are Mr. Billings, Professor Merrill, Mr. Miller, and Mr. Morelli.

#### **7. URE Rule 1006 Subcommittee**

Next, the Committee considered amending URE 1006 based on recent amendments to the federal rule regarding summaries. Ms. Salazar-Hall indicated that this rule comes up a lot in domestic cases but that practices for admitting summaries can vary greatly from judge to judge. Judge Jones suggested having this rule considered by the URE 107 subcommittee to promote the consistency of proposed changes. Judge Leavitt and others agreed. The URE 107 subcommittee will also consider changes to URE 1006.

#### **8. FRE Amendments for AI Evidence**

Ms. Salazar-Hall noted that efforts are presently underway to make expedited changes to the federal rules to address recent and ongoing developments in artificial intelligence. She has sent materials to Mr. Willard that he will forward to the Committee regarding the proposed changes.

#### **ADJOURN:**

**With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be January 14, 2025, at 5:15 pm, via Webex Webinar video conferencing.**