

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

MEETING MINUTES

**January 14th, 2025
5:15 p.m.-6:45 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	Adam Merrill Hon. David Williams		Jace Willard

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

Ms. Salazar-Hall welcomed everyone to the meeting. Judge Leavitt moved for approval of the November meeting minutes. Mr. Billings seconded. The motion carried.

2. Review Public Comments re URE 1102

A draft amendment to URE 1102 adding a reference to the legislation amending that rule last year was published for public comment. No comments were received. Judge McKelvie moved that the Committee seek Supreme Court approval for the draft amendment to be made final. Ms. Sykes seconded. The motion carried.

3. URE 106 Subcommittee Report

Ms. Carlquist summarized the report prepared by the URE 106 Subcommittee in response to

questions raised by Justice Hagen about the proposed amendments to that rule, which were published for public comment last year. The report reviews the work of the FRE advisory committee on the corresponding federal rule and concludes that Utah should follow the federal rule amendments here and add a committee note so indicating. Ms. Carlquist moved that the report and revised rule be approved for submission to the Supreme Court with a request that the draft amendments be made final. Judge Leavitt seconded. The motion carried.

4. URE 408 Subcommittee Formed

A recent Court of Appeals opinion, *Small v. Small*, 2024 UT App 173, ¶ 13 n.2, noted a difference between FRE 408 and the Utah rule. There does appear to be conflicting caselaw on the subject from the appellate courts: compare *Anderson v. Thompson*, 2008 UT App 3, ¶¶ 29-32, 176 P.3d 464 (evidence of settlement negotiations could not be used for impeachment purposes, although Utah has not adopted the federal rule's express prohibition against such use) and *Matter of Est. of Osguthorpe*, 2021 UT 23, ¶ 143 n.40, 491 P.3d 894 (settlement negotiations could be used for impeachment purposes; noting that Utah has not adopted prohibition in federal rule) (not mentioning but impliedly overruling *Anderson*). Ms. Carlquist noted that amending URE 408(a)(2) to correspond with the federal rule may result in conflict with URE 410. A subcommittee was formed to look at possible amendments. Subcommittee members include Mr. Young, Ms. Carlquist, Mr. Billings, and Ms. Sykes.

5. Artificial Intelligence and URE 702, 707, and 901 Discussed

The Committee discussed a recent report regarding possible amendments to FRE 702, 707, and/or 901 to address issues arising from the proliferation of deepfakes and generative artificial intelligence. The Committee discussed options for similar amendments to the corresponding Utah rules. Several members expressed the view that it may be premature to amend the rules at this point and that it would be preferable to wait and see if and how the federal rules are amended to address these issues. But several members also supported taking an informal poll of judges regarding their experience and the need for related URE amendments. Mr. Willard will consult with Keisa Williams to see about conducting such a poll. Committee members can also visit with other attorneys on this issue. The Committee will revisit the issue in the next few months.

6. URE 702 Subcommittee Formed

Judge Leavitt suggested that the text of URE 702 should be amended to comport with a committee note and case law recognizing the propriety of “blind experts” giving testimony to educate the factfinder regarding general principles relevant to the case. Mr. Young indicated that this is a hot-button issue but that he opposes the practice as essentially telling the factfinder whom to believe. Ms. Salazar-Hall said that in her experience such testimony can be very helpful in domestic cases, where the judge is the factfinder and understands the law. Professor Brown added that the practice is very useful to provide “framework” evidence to help people unfamiliar with a given group to understand how members of the group tend to behave. She said the evidence comes in for both sides and is conditionally relevant, with the jury

deciding whether a party is a member of the group at issue. She acknowledged that problems arise where this type of evidence is carelessly allowed, such as in cases where police with insufficient familiarity with a given group are permitted to testify about that group's common behavior. Following further discussion regarding the need for an amendment, a subcommittee was formed to look at the issue more closely. Members of the subcommittee include Ms. Salazar-Hall, Mr. Heiner, Mr. Morelli, Mr. Miller, and Mr. Lythgoe.

7. URE 613 Update

Draft amendments to URE 613 that the Committee approved in November will be going up to the Supreme Court with URE 1102 and 106.

8. URE 613 Farewell to Judge Leavitt

Judge Leavitt, who will complete his first term of service on the Committee next month, was recently appointed to the Judicial Council and will thus be stepping down from the Committee. He has greatly enjoyed serving on the Committee and will miss it. Ms. Salazar-Hall and other members of the Committee likewise expressed appreciation for his service and bid him a fond farewell.

ADJOURN:

With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be February 11, 2025, at 5:15 pm, via Webex Webinar video conferencing.