

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

MEETING MINUTES

**February 11th, 2025
5:15 p.m.-7:00 p.m.
Via Webex**

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

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

Ms. Salazar-Hall welcomed everyone to the meeting. Mr. Lythgoe moved for approval of the January meeting minutes. Ms. Carlquist seconded. The motion carried. Ms. Salazar-Hall welcomed new member, Second District Juvenile Judge Rick Westmoreland, to the Committee and invited him and all Committee members present to introduce themselves.

2. Update: Supreme Court Conference re URE 106, 613, and 1102

Ms. Salazar-Hall updated the Committee that the Supreme Court recently gave final approval as to the previously published proposed amendments for URE 106 and 1102, and approved for publication proposed amendments to URE 613.

3. Discussion: Informal Poll of Judges re Need for AI-Related Rules or Amendments

Ms. Salazar-Hall reviewed a draft letter to the various boards of judges seeking input on their experiences and perspective regarding the need for AI-related rules or amendments. Mr. Young moved that the letter be approved and sent. Ms. Carlquist seconded. The motion carried. Mr. Willard will send the letter to Professor Brown to be put into Qualtrics format.

4. URE 404 Subcommittee and URE Committee Notes Review Subcommittee Formed

A recent Court of Appeals opinion, *State v. Estes*, 2025 UT App 10, ¶ 20 n.3., encouraged the Committee to revise the committee note to Rule 404 to correct an outdated statement regarding the so-called “Shickles factors.” Ms. Salazar-Hall suggested that the statement could be corrected by striking the final sentence of Rule 404’s Original Advisory Committee Note.

Mr. Heiner asserted that the Shickles factors are still relevant to Rule 403. Judge Jones suggested drafting a new note to clarify how the factors are currently to be applied. Others agreed. A Rule 404 Subcommittee was formed and includes the following members: Mr. Heiner, Ms. Carlquist, and Mr. Young.

Additionally, at Mr. Young’s suggestion, a separate subcommittee was formed to review all URE committee notes for other outdated statements. The URE Committee Notes Review Subcommittee includes the following members: Mr. Young (chair), Mr. Graf, Mr. Morelli, Prof. Merrill, and Ms. Sykes.

5. Update: URE 107 and 1006 Subcommittee

Professor Brown explained that proposed new Rule 107 arises from the need to distinguish between demonstrative evidence and illustrative aids. The latter is not evidence but may be helpful for understanding admitted evidence. Draft Rule 107 generally follows the new federal rule 107, but the subcommittee recommended that the word “reasonable” be substituted for the federal rule’s “practicable” in subparagraph (c) as to when “an illustrative aid used at trial must be entered into the record.” The subcommittee has also drafted a new committee note for Rule 107.

Mr. Young disagreed with the proposed subparagraph (c) alteration, saying that “reasonable” is too discretionary and is inconsistent with the “must” language in the same provision. He maintained that everything that is shown to a jury at trial should be available for review on appeal. Ms. Sykes said that shouldn’t always be the case, using the example of an expensive model human brain that she would not want to have kept in an evidence closet for years pending an appeal. Mr. Miller added that it might suffice to enter a photograph of the aid into the record. Mr. Lythgoe viewed “reasonable” and “practicable” as essentially synonymous. Ms. Carlquist referenced the definition of the record on appeal from Utah R. App. P. 11(a), noting that it doesn’t include everything shown to a jury, and that an attorney should object if something isn’t entered into evidence that should be.

Professor Brown indicated that the subcommittee will give this matter further attention. She anticipates that Rule 107 and Rule 1006 will be ready to return to the Committee for the April agenda.

6. Update: URE 702 Subcommittee

Ms. Salazar-Hall noted the proposed revision of Rule 702(b)(3) to make the text conform to current practice regarding the use of “blind experts.” Ms. Sykes said she agreed with certain feedback included in the materials from med-mal attorneys on the UAJ listserv expressing concern regarding the proposed amendments. Judge Jones pointed out that blind experts have been permitted in the Clopten case referenced in the draft committee note as well as *State v. Martin*, 2017 UT 63, ¶¶ 28-32. Mr. Young expressed doubt that Clopten is supportive of blind experts generally outside the specific context of that case (eyewitness testimony). He also referenced additional authority relevant to that context: Rule 617. Mr. Heiner said Judge Jones and Mr. Young were both right. Ms. Salazar-Hall noted that blind experts are frequently used in domestic cases and Mr. McBride says they are also common in criminal cases. Following further discussion, Mr. Morelli moved that a letter be drafted seeking direction from the Supreme Court as to whether the Justices would like the Committee to pursue this issue further. Ms. Carlquist seconded. The motion carried.

7. Update from URE 804 Subcommittee Postponed

Due to a scheduling conflict, Professor Merrill was unable to attend the full meeting. Accordingly, the Rule 804 Subcommittee determined to report to the Committee in March.

ADJOURN:

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