

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

MEETING MINUTES

**April 8th, 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 Scott Lythgoe Ryan McBride Adam Merrill Benjamin Miller Andres Morelli Hon. Coral Sanchez Rachel Sykes Hon. Rick Westmoreland Dallas Young	Hon. Linda Jones Hon. Richard McKelvie	Jacqueline Carlton	Jace Willard

1. Welcome and Approval of Minutes

Ms. Salazar-Hall welcomed everyone to the meeting. Ms. Sykes moved to approve the February meeting minutes. Mr. Lythgoe seconded. The motion carried.

2. Welcome and Introductions for New Member

Ms. Salazar-Hall welcomed new member, Third District Judge Coral Sanchez, to the Committee and invited her and all Committee members present to introduce themselves.

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

Ms. Salazar-Hall noted that the informal poll regarding the need for AI-related rules or amendments has been approved and sent out to some of the various boards of judges. It is anticipated that the results will be back for the Committee's review in the next month or two.

4. Update: Historical Rules Feature Request

Mr. Willard reported that the IT Department is reviewing the Committee's request to update the courts website to add a feature making it easier to find historical versions of the rules, similar to the Legislature's website for historical versions of different Code sections.

5. Discussion: Public Comments re URE 613

Ms. Salazar-Hall noted that no public comments were received in response to the recently published proposed amendments to URE 613. Ms. Carlquist moved that the proposed amendments be sent back to the Supreme Court with a request that they be made final. Mr. Lythgoe seconded. The motion carried.

6. Discussion: SJR4 Amendment of URCP 26 and URE 510

Ms. Salazar-Hall summarized the Legislature's recent passage of SJR4, which amended URCP 26 and URE 510, adding provisions regarding the work-product doctrine and waiver of the attorney-client privilege in the context of a legislative audit. Mr. Graf moved that a comment be added to URE 510 identifying the legislation behind the amendment, similar to what has been done with other rules. Mr. Young seconded. The motion carried.

7. Discussion: URE 408 Subcommittee Report

Ms. Carlquist summarized the Rule 408 Subcommittee's review of caselaw regarding differences between FRE 408 and the Utah Rule 408. The Subcommittee proposes to add a committee note pointing out the difference between the two rules regarding impeachment by a prior inconsistent statement. Judge Westmoreland moved to adopt the note. Professor Brown seconded. The motion carried.

8. Discussion: Draft Letter re URE 702

The Committee reviewed a draft letter seeking the Supreme Court's direction regarding a proposal to amend Rule 702 to address so-called "blind experts." Mr. Young, Professor Brown, and Ms. Sykes each suggested different possible edits to the letter and the language of the proposed Rule 702 amendment discussed therein. Following discussion, due to the lack of consensus, Ms. Salazar-Hall suggested that the language regarding the proposed amendment be removed from the letter to simply state the issue in general terms. Mr. Billings moved to approve the letter with that proposed revision. Ms. Carlquist seconded. The motion carried.

9. Discussion: URE 804 Subcommittee Report

Professor Merrill summarized the Subcommittee's review of the recent amendments to FRE 804. At this point the Subcommittee believes that the recent FRE 804 amendments should be

adopted and made part of URE 804. He noted, however, that amendments previously made to FRE 807 have not been made as to URE 807, and that adopting the FRE 804 amendments into URE 804 without also changing URE 807 could create an inconsistency in the law. Thus, the Rule 804 Subcommittee will also look into potentially amending Rule 807 and will return with a recommendation as to both of these rules. Ms. Carlquist noted the existence of relevant Utah caselaw as to URE 807 and will send it to Mr. Willard to be forwarded to the Subcommittee.

10. Discussion: URE 107 and 1006 Subcommittee Report

Professor Brown summarized the circumstances leading to the recent addition of FRE 107 and 1006. The Subcommittee proposes that FRE 107 generally be adopted as a new URE 107, with the exception of subparagraph (c). FRE 107(c) provides that “[w]hen practicable, an illustrative aid used at trial must be entered into the record.” The Subcommittee believes more guidance is desirable on this point and has revised subparagraph (c) to provide: “If requested, the court shall permit a party to describe the illustrative aid to be included in the trial record, and if practicable and upon request, the illustrative aid itself must be entered into the record.” Ms. Carlquist and Ms. Salazar-Hall expressed agreement, saying the revised language strikes the right balance. Mr. Young moved that URE 107 as proposed by the Subcommittee be approved. Mr. Billings seconded. The motion carried. The Subcommittee will next consider FRE 1006 and whether it should be adopted as a new URE 1006.

11. Discussion: URE 404 Subcommittee Report

Ms. Carlquist reminded the Committee of recent caselaw (*State v. Estes*, 2025 UT App 10, ¶ 20 n.3) inviting the Committee to revise the committee note to Rule 404 as to the *Shickles* factors. The Subcommittee presented two possible revision options: Option A would add an explanatory note regarding caselaw affecting consideration of the *Shickles* factors. Option B would simply strike the sentence regarding the *Shickles* factors from the “Original Advisory Committee Note.” Judge Sanchez favored Option A as more helpful. No one disagreed. Mr. Billings moved to approve Option A to go to the Supreme Court with a recommendation that it be approved for publication. Mr. Miller seconded. The motion carried.

ADJOURN:

With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. Depending on the number of substantive items on the agenda, the next meeting will be either May 13 or June 10, 2025, at 5:15 pm, via Webex Webinar video conferencing.