



## Utah Supreme Court Rules of Evidence Committee

### Meeting Agenda

*Nicole Salazar-Hall, Chair*

Location: [WebEx Meeting](#)

Date: June 10, 2025

Time: 5:15 p.m. - 7:15 p.m. MST

<b>Action:</b> Welcome and approve April 8, 2025 Minutes	Tab 1	Nicole Salazar-Hall
<b>AI Poll Update:</b> results from Boards of Appellate, District, and Juvenile Court Judges	Tab 2	Nicole Salazar-Hall
<b>Update:</b> URE 404, 408, 510, 613, and 702		Nicole Salazar-Hall
<b>Discussion:</b> URE 702 redline (blind experts)	Tab 3	Nicole Salazar-Hall

[Committee Web Page](#)

#### **Meeting Schedule:**

January 14, 2025

February 11, 2025

April 8, 2025

June 10, 2025

October 14, 2025

November 11, 2025

**Rule Status:**

URE 107 – Draft approved by Committee; awaiting 1006 completion

URE 404 – Out for comment

URE 408 – Out for comment

URE 613 – Given final approval

URE 702 – In draft; back from Supreme Court with feedback

URE 707 – In draft (on hold pending FRE AI-amendments)

URE 801 – Awaiting further federal caselaw

URE 804 – In draft with subcommittee

URE 901 – In draft (on hold pending FRE AI-amendments)

URE 1006 – In draft with subcommittee

URE Committee Notes Review – In draft with subcommittee

TAB 1

**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

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**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.**

TAB 2

### Appellate Judge AI Poll Results

	Have judges in your district encountered efforts to admit deepfakes into evidence, or allegations of deepfakery from the opponent of any given evidence, that could not easily be addressed by the existing rules of evidence as to authentication?	Do you think the rise of deepfakes warrants new treatment in the rules?	Utah's evidence rules are modeled after the federal rules. Are you comfortable if, prior to pursuing AI-related amendments to Utah's rules, the Committee waits to see if and how the federal rules of evidence are amended to address this challenge?
4		Yes	No
5	N/A	Yes	I am comfortable with that.
6		I am not sure.	Yes.
7	Not that I have seen	Yes	Yes.
8	N/A	No, the traditional rules requiring parties to establish foundation should be sufficient.	Yes.
9	N/A	I'm not sure yet. It's possible that rules regarding authentication might be sufficient to address it. The question for me would be if there is some reason why those rules wouldn't be enough.	Yes.
10	N/A	Maybe, but not right now.	I think that waiting for the federal rules to address the issue makes a lot of sense, unless in the interim there is a significant number of issues that arise in Utah.
11	N/A	Yes	Yes
	No	I don't know enough to have an opinion on this question.	I am comfortable with this approach for the time being.



District Judge AI Poll Results			
	Have judges in your district encountered efforts to admit deepfakes into evidence, or allegations of deepfakery from the opponent of any given evidence, that could not easily be addressed by the existing rules of evidence as to authentication?	Do you think the rise of deepfakes warrants new treatment in the rules?	Utah's evidence rules are modeled after the federal rules. Are you comfortable if, prior to pursuing AI-related amendments to Utah's rules, the Committee waits to see if and how the federal rules of evidence are amended to address this challenge?
4	No.	Yes	Yes.
5	I haven't yet.	Yes	IDK.
6	I am not aware of any allegations of deep fakes so there has been no need to apply the existing rules of evidence. I anticipate there will be a need.	More probably the rules of ethics. I would have to see what proposals are being proffered regarding changes in the rules of evidence.	I am okay with moving forward without reference to the federal rules, but I would like to see what the proposed amendments look like and an explanation of how the amendments address the problem.
7	Not to my knowledge	I think it deserves evaluation to see if necessary. It seems existing rules are sufficient but it does deserve study to confirm this.	I am fine waiting for the Federal Rules group to act.
8	I have not heard of any such issues in my district.	No. These would be false statements / evidence to a tribunal that could be addressed by current rules. Theoretically, if there was something to change, it might be worth a statutory change to make such deepfakery felony conduct rather than address it in rules.	Fine with me.
9	No we have not encountered any deepfakes or allegations of deepfakery.	No. The rules adequately cover the issue.	Yes, we are comfortable waiting for a federal rule.
10	No	No	Yes

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Juvenile Judge AI Poll Results			
	Have judges in your district encountered efforts to admit deepfakes into evidence, or allegations of deepfakery from the opponent of any given evidence, that could not easily be addressed by the existing rules of evidence as to authentication?	Do you think the rise of deepfakes warrants new treatment in the rules?	Utah's evidence rules are modeled after the federal rules. Are you comfortable if, prior to pursuing AI-related amendments to Utah's rules, the Committee waits to see if and how the federal rules of evidence are amended to address this challenge?
4	I am not aware of any.	Possibly.	Yes.
5	Not to my knowledge.	Unsure.	Yes.
6	Not that I am aware of.	I think it's probably better to get ahead of the issue than wait.	Have judges in your district encountered efforts to admit deepfakes into evidence, or allegations of deepfakery from the opponent of any given evidence, that could not easily be addressed by the existing rules of evidence as to authentication?
7	No	I think it certainly should be addressed, at least as it relates to laying foundation.	That seems like a good idea.

TAB 3

**Rule 702. Testimony by Experts.**

(a) Subject to the limitations in paragraph (b), a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.

(b) Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony

(b)(1) are reliable,

(b)(2) are based upon sufficient facts or data, and

(b)(3) have been reliably applied to the facts, or if not applied to the specific facts of the case, are intended to educate the factfinder about ~~general~~ principles relevant to the case.

(c) The threshold showing required by paragraph (b) is satisfied if the underlying principles or methods, including the sufficiency of facts or data and the manner of their application to the facts of the case, are generally accepted by the relevant expert community.

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2025 Advisory Committee Note. The language of subparagraph (b)(3) has been amended to make express allowance for the possibility of so-called "blind experts," who are already permitted under existing Utah practice and caselaw. See, e.g., State v. Clopten, 2009 UT 84, ¶ 36, 223 P.3d 1103. These "blind experts" are subject to the same threshold showing outlined in parts (b), (b)(1), and (b)(2).

**2011 Advisory Committee Note.** The language of this rule has been amended as part of the restyling of the Evidence Rules to make them more easily understood and to make class and terminology consistent throughout the rules. These changes are intended to be

stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

**Original Advisory Committee Note.** Apart from its introductory clause, part (a) of the amended Rule recites verbatim Federal Rule 702 as it appeared before it was amended in 2000 to respond to Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993). The 2007 amendment to the Rule added that introductory clause, along with parts (b) and (c). Unlike its predecessor, the amended rule does not incorporate the text of the Federal Rule. Although Utah law foreshadowed in many respects the developments in federal law that commenced with Daubert, the 2007 amendment preserves and clarifies differences between the Utah and federal approaches to expert testimony.

The amended rule embodies several general considerations. First, the rule is intended to be applied to all expert testimony. In this respect, the rule follows federal law as announced in Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999). Next, like its federal counterpart, Utah's rule assigns to trial judges a "gatekeeper" responsibility to screen out unreliable expert testimony. In performing their gatekeeper function, trial judges should confront proposed expert testimony with rational skepticism. This degree of scrutiny is not so rigorous as to be satisfied only by scientific or other specialized principles or methods that are free of controversy or that meet any fixed set of criteria fashioned to test reliability. The rational skeptic is receptive to any plausible evidence that may bear on reliability. She is mindful that several principles, methods or techniques may be suitably reliable to merit admission into evidence for consideration by the trier of fact. The fields of knowledge which may be drawn upon are not limited merely to the "scientific" and "technical", but extend to all "specialized" knowledge. Similarly, the expert is viewed, not in a narrow sense, but as a person qualified by "knowledge, skill, experience, training or education". Finally, the gatekeeping trial judge must take care to direct her skepticism to the particular proposition that the expert testimony is offered to support. The Daubert court characterized this task as focusing on the "work at hand". The practitioner should

54 equally take care that the proffered expert testimony reliably addresses the “work at  
55 hand”, and that the foundation of reliability presented for it reflects that consideration.

56 Section (c) retains limited features of the traditional Frye test for expert testimony.  
57 Generally accepted principles and methods may be admitted based on judicial notice.  
58 The nature of the “work at hand” is especially important here. It might be important in  
59 some cases for an expert to educate the factfinder about general principles, without  
60 attempting to apply these principles to the specific facts of the case. The rule recognizes  
61 that an expert on the stand may give a dissertation or exposition of principles relevant to  
62 the case, leaving the trier of fact to apply them to the facts. Proposed expert testimony  
63 that seeks to set out relevant principles, methods or techniques without offering an  
64 opinion about how they should be applied to a particular array of facts will be, in most  
65 instances, more eligible for admission under section (c) than case specific opinion  
66 testimony. There are, however, scientific or specialized methods or techniques applied at  
67 a level of considerable operational detail that have acquired sufficient general acceptance  
68 to merit admission under section (c).

69 The concept of general acceptance as used in section (c) is intended to replace the novel  
70 vs. non-novel dichotomy that has served as a central analytical tool in Utah’s Rule 702  
71 jurisprudence. The failure to show general acceptance meriting admission under section  
72 (c) does not mean the evidence is inadmissible, only that the threshold showing for  
73 reliability under section (b) must be shown by other means.

74 Section (b) adopts the three general categories of inquiry for expert testimony contained  
75 in the federal rule. Unlike the federal rule, however, the Utah rule notes that the  
76 proponent of the testimony is required to make only a “threshold” showing. That  
77 “threshold” requires only a basic foundational showing of indicia of reliability for the  
78 testimony to be admissible, not that the opinion is indisputably correct. When a trial  
79 court, applying this amendment, rules that an expert's testimony is reliable, this does not  
80 necessarily mean that contradictory expert testimony is unreliable. The amendment is  
81 broad enough to permit testimony that is the product of competing principles or methods

82 in the same field of expertise. Contrary and inconsistent opinions may simultaneously  
83 meet the threshold; it is for the factfinder to reconcile - or choose between - the different  
84 opinions. As such, this amendment is not intended to provide an excuse for an automatic  
85 challenge to the testimony of every expert, and it is not contemplated that evidentiary  
86 hearings will be routinely required in order for the trial judge to fulfill his role as a  
87 rationally skeptical gatekeeper. In the typical case, admissibility under the rule may be  
88 determined based on affidavits, expert reports prepared pursuant to Utah R.Civ.P. 26,  
89 deposition testimony and memoranda of counsel.