



## Utah Supreme Court Rules of Evidence Committee

### Meeting Agenda

*Nicole Salazar-Hall, Chair*

Location: [WebEx](#) Meeting

Date: November 12, 2025

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

<b>Action:</b> Welcome and approve October 14, 2025 Minutes	Tab 1	Nicole Salazar-Hall
<b>Update:</b> URE 107, 404, 408, 510, 702, 1006 (going to Supreme Court)		Nicole Salazar-Hall
<b>Discussion:</b> URE 804 and 807	Tab 2	Adam Merrill

[Committee Web Page](#)

#### **Meeting Schedule:**

January 14, 2025

February 11, 2025

April 8, 2025

June 10, 2025

October 14, 2025

November 11, 2025

January 13, 2026

February 10, 2026

March 10, 2026

April 14, 2026  
May 12, 2026  
June 9, 2026  
October 13, 2026  
November 10, 2026

**Rule Status:**

URE 107 – Draft approved by Committee  
URE 404 – Back from comment – returning to Supreme Court for final approval  
URE 408 – Back from comment – returning to Supreme Court for final approval  
URE 510 – Back from comment – returning to Supreme Court for final approval  
URE 702 – Draft approved by Committee  
URE 707 – In draft (on hold pending FRE AI-amendments)  
URE 801 – Awaiting further federal caselaw  
URE 804 – In draft with subcommittee  
URE 807 – In draft with subcommittee  
URE 901 – In draft (on hold pending FRE AI-amendments)  
URE 1006 – Draft approved by Committee  
URE Committee Notes Review – In draft with subcommittee  
AI Rules – Under study by subcommittee

# TAB 1

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

**MEETING MINUTES**

**October 14, 2025  
5:15 p.m.-7:15 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 Wendy Brown Clint Heiner Hon. Linda Jones Nathan Lyon Scott Lythgoe Ryan McBride Hon. Richard McKelvie Adam Merrill Benjamin Miller Hon. Coral Sanchez Rachel Sykes Hon. Rick Westmoreland Dallas Young	Teneille Brown Andres Morelli		Jace Willard

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**1. Welcome and Approval of Minutes**

Ms. Salazar-Hall welcomed everyone to the meeting. The June meeting minutes were approved.

**2. Welcome to New Members**

Ms. Salazar-Hall welcomed new members, Wendy Brown and Nathan Lyon. They and all other members present introduced themselves.

**3. Discussion: Public Comments to URE 404, 408, 510**

Ms. Salazar-Hall noted that the proposed amendments to Rules 404, 408, and 510 are back from public comment. No comments were received regarding Rules 408 and 510, which will go

back to the Supreme Court for final approval as-is. The two comments received as to Rule 404 both suggested amending the new proposed Committee note to highlight that, per *State v. Cuttler*, 2015 UT 95, ¶ 20, 367 P.3d 981, the overmastering hostility factor should not be considered in a rule 403 analysis. Judge Jones proposed adding language to that effect to the comment. Concerns were expressed that language about Rule 403 could be confusing in a Rule 404 comment. Mr. Billings suggested expanding the paragraphs referenced in the *Cuttler* decision and adding a reference to *State v. Fredrick*, 2019 UT App 152, ¶¶ 40-46, 450 P.3d 1154, to explain the interplay between the two rules. Following discussion, Mr. Lyon moved to approve the comment with the changes proposed and send the rule back to the Supreme Court for final approval. Ms. Carlquist seconded. The motion carried.

#### **4. Discussion: URE 1006 and 107**

Judge Jones presented proposed amendments to Rule 1006 that correspond with the proposed new Rule 107, previously approved by the Committee. The Committee agreed to seek Supreme Court approval to publish the proposed amendments for public comment. Mr. Willard suggested that formatting changes to Rule 107 be made to reflect that the entire rule is new. The Committee agreed, provided that the deviations from the federal version are highlighted for the Supreme Court. Ms. Salazar-Hall, Ms. Carlquist, and Mr. Willard will ensure this is done.

#### **5. Updates: AI Subcommittee and Rules 804 and 807 Subcommittee**

Ms. Salazar-Hall noted that the AI Subcommittee is still monitoring progress of the federal rules committee regarding proposed AI amendments, and awaiting further development of the federal rules, prior to proposing amendments to the Utah rules to address AI.

Mr. Merrill indicated he will be forwarding materials to the other members of the Rules 804 and 807 Subcommittee promptly and they will continue their work.

#### **6. Discussion: URE 702**

Mr. McBride presented four versions of proposed amendments to Rule 702 to address the issue of blind experts. The versions differ in their inclusion or exclusion of language as to “specific” facts and “general” principles. Ms. Salazar-Hall expressed concern about the modifying language, “specific” and “general.” Ms. Carlquist agreed and expressed a preference for version 2.1, omitting that language. Mr. Lythgoe and Judge Sanchez agreed. Following discussion, Mr. Heiner moved to send version 2.1 to the Supreme Court for approval to be published for public comment.

#### **ADJOURN:**

**With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be held on November 12, 2025, beginning at 5:15 pm, via Webex Webinar video conferencing.**

TAB 2

1 **Rule 804. Exceptions to the ~~R~~rule ~~A~~gainst ~~H~~earsay - ~~W~~hen the ~~D~~declarant is**  
2 **~~u~~Unavailable as a ~~W~~witness.**

3 **(a) Criteria for ~~B~~eing ~~U~~navailable.** A declarant is considered to be unavailable as a  
4 witness if the declarant:

5 ~~(a)~~**(1)** is exempted from testifying about the subject matter of the declarant's statement  
6 because the court rules that a privilege applies;

7 ~~(a)~~**(2)** refuses to testify about the subject matter despite a court order to do so;

8 ~~(a)~~**(3)** testifies to not remembering the subject matter;

9 ~~(a)~~**(4)** cannot be present or testify at the trial or hearing because of death or a then-  
10 existing infirmity, physical illness, or mental illness; or

11 ~~(a)~~**(5)** is absent from the trial or hearing and the statement's proponent has not been  
12 able, by process or other reasonable means, to procure the declarant's attendance.

13 But this subdivision (a) does not apply if the statement's proponent procured or  
14 wrongfully caused the declarant's unavailability as a witness in order to prevent the  
15 declarant from attending or testifying.

16 **(b) The ~~E~~xceptions.** The following are not excluded by the rule against hearsay if the  
17 declarant is unavailable as a witness:

18 ~~(b)~~**(1) Former ~~t~~estimony.** Testimony that:

19 ~~(b)(1)~~**(A)** was given as a witness at a trial, hearing, or lawful deposition, whether  
20 given during the current proceeding or a different one; and

21 ~~(b)(1)~~**(B)** is now offered against a party who had — or, in a civil case, whose  
22 predecessor in interest had — an opportunity and similar motive to develop it by  
23 direct, cross-, or redirect examination.

24 ~~(b)~~**(2) Statement ~~U~~nder the ~~B~~elief of ~~I~~mminent ~~D~~death.** In a civil or criminal case,  
25 a statement made by the declarant while believing the declarant's death to be  
26 imminent, if the judge finds it was made in good faith.

**~~(b)(3)~~ Statement ~~a~~Against ~~I~~nterest.** A statement that:

**~~(b)(3)~~(A)** a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

**~~(b)(3)~~(B)** if offered in a criminal case as one that tends to expose the declarant to criminal liability, is supported by corroborating circumstances that clearly indicate its trustworthiness after considering the totality of circumstances under which it was made and any evidence that supports or undermines it, ~~if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.~~

**~~(b)(4)~~ Statement of ~~P~~ersonal or ~~F~~amily ~~h~~History.** A statement about:

**~~(b)(4)~~(A)** the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

**~~(b)(4)~~(B)** another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

**Effective: ~~--/--/----~~**

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**2025 Advisory Committee Note.** The language of subparagraph (b)(3)(B) has been amended in conformity with recent amendments to the federal rule.

**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.** Subdivision (a) is comparable to Rule 63(7), Utah Rules of Evidence (1971). Rule 62(7)[(e)], Utah Rules of Evidence (1971), seems to be encompassed in Rule 804(a)(5). Subdivision (a)(5) is a modification of the federal rule which permits judicial discretion to be applied in determining unavailability of a witness.

Subdivision (b)(1) is comparable to Rule 63(3), Utah Rules of Evidence (1971), but the former rule is broader to the extent that it did not limit the admission of the testimony to a situation where the party to the action had the interest and opportunity to develop the testimony. Condas v. Condas, 618 P.2d 491 (Utah 1980); State v. Brooks, 638 P.2d 537 (Utah 1981).

Subdivision (b)(2) is comparable to Rule 63(5), Utah Rules of Evidence (1971), but the former rule was not limited to declarations concerning the cause or circumstances of the impending death nor did it limit dying declarations in criminal prosecutions to homicide cases. The rule has been modified by making it applicable to any civil or criminal proceeding, subject to the qualification that the judge finds the statement to have been made in good faith.

Subdivision (b)(3) is comparable to Rule 63(10), Utah Rules of Evidence (1971), though it does not extend merely to social interests.

Subdivision (b)(4) is similar to Rule 63(24), Utah Rules of Evidence (1971).

Subdivision (b)(5) had no counterpart in Utah Rules of Evidence (1971).

**Rule 807. Residual ~~E~~exception.**

*Effective: 11/1/2004*

**(a) In General.** Under the following ~~circumstances~~conditions, a hearsay statement is not excluded by the rule against hearsay even if the statement is not ~~specifically covered by~~ admissible under a hearsay exception in Rule 803 or 804:

~~(a)(1) the statement has equivalent circumstantial is supported by sufficient guarantees of trustworthiness — after considering the totality of circumstances under which it was made and evidence, if any, corroborating the statement; and~~

~~(a)(2) it is offered as evidence of a material fact;~~

~~(a)(3) it is more probative on the point for which it is offered than any other evidence that the proponent can obtain through reasonable efforts; and.~~

~~(a)(4) admitting it will best serve the purposes of these rules and the interests of justice.~~

**(b) Notice.** The statement is admissible only if, ~~before the trial or hearing,~~ the proponent gives an adverse party reasonable notice of the intent to offer the statement ~~and its particulars,~~ — including its substance and the declarant's name ~~and address,~~ — so that the party has a fair opportunity to meet it. The notice must be provided in writing before the trial or hearing — or in any form during the trial or hearing if the court, for good cause, excuses a lack of earlier notice.

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**2025 Advisory Committee Note.** The language of this rule has been amended in conformity with amendments to the federal rule, effective December 1, 2019.

**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

26 stylistic only. There is no intent to change any result in any ruling on evidence  
27 admissibility. This rule is the federal rule, verbatim.

28 **Original Advisory Committee Note.** This rule transfers identical provisions Rule 803(24)  
29 and Rule 804(b)(5) to a new Rule 807 to reflect the organization found in the Federal Rules  
30 of Evidence. No substantive change is intended. This rule is the federal rule, verbatim.

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