Utah Supreme Court
Rules of Evidence Committee

Meeting Agenda

Nicole Salazar-Hall, Chair

Location: WebEx Meeting

Date: January 13, 2026

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

Action: Welcome and approve November 12, 2025 Minutes	Tab 1	Nicole Salazar-Hall
Update: URE 404, 408, 510 (final approval given)		Nicole Salazar-Hall
Update: URE 107 (new Committee Note needed) and URE 1006 (awaiting Rule 107)	Tab 2	Nicole Salazar-Hall
Update: URE 702 (new Committee Note needed)	Tab 3	Nicole Salazar-Hall
Update: URE 804 and 807 (going to Supreme Court for approval to go out for comment)		Nicole Salazar-Hall

Committee Web Page

Meeting Schedule:
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 – Back from Supreme Court – new Committee Note needed
URE 404 – Given final approval
URE 408 – Given final approval
URE 510 – Given final approval
URE 702 – Back from Supreme Court – new Committee Note needed
URE 707 – In draft (on hold pending FRE AI-amendments)
URE 801 – Awaiting further federal caselaw
URE 804 – Going to Supreme Court for approval to go out for comment
URE 807 – Going to Supreme Court for approval to go out for comment
URE 901 – In draft (on hold pending FRE AI-amendments)
URE 1006 – Approved by Supreme Court to go out for comment – awaiting Rule 107
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

November 12, 2025
5:15 p.m.-7:15 p.m.
Via Webex

MEMBERS PRESENT	MEMBERS EXCUSED	GUESTS	STAFF
Nicole Salazar-Hall	Wendy Brown		Jace Willard
Sarah Carlquist	Scott Lythgoe		
David Billings	Ryan McBride		
Teneille Brown	Andres Morelli		
Clint Heiner	Rachel Sykes		
Hon. Linda Jones	Dallas Young		
Nathan Lyon			
Hon. Richard McKelvie			
Adam Merrill			
Benjamin Miller			
Hon. Coral Sanchez			
Hon. Rick Westmoreland			

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1. Welcome and Approval of Minutes

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

2. Update: URE 107, 404, 408, 510, 702, 1006

Ms. Salazar-Hall noted that, per the Committee's prior recommendations, all of the proposed amendments regarding the above rules will be going to the Supreme Court next week, either for approval to go out for public comment or to be made final.

3. Discussion: URE 804 and 807

Mr. Merrill presented the subcommittee's recommendation that Rule 804 be amended to align with recent changes to the federal rule. He noted that subparagraph (b)(3)(B), as amended, would clarify that courts consider the totality of the circumstances to determine a statement's trustworthiness, not just corroborating circumstances.

Mr. Merrill also presented proposed changes to Rule 807 to mirror the 2019 amendments to the federal rule. The amendment to subparagraph (a) would make clear that "near miss" hearsay (evidence that narrowly fails another exception) can be considered under the residual exception. Changes to subparagraphs (a)(1) through (4) include adopting the "totality of circumstances" test and removing superfluous language.

The Committee discussed caselaw in which the court of appeals concluded that the residual exception does not apply if another exception applies. *State v. Buttars*, 2020 UT App 87, ¶¶ 30-37, 468 P.3d 553 (because business records exception is intended to cover admissibility of bank records, such records should not have been admitted under residual exception absent compelling circumstances showing why business records exception could not be met). The Committee believes the proposed changes are consistent with this caselaw.

Following discussion, Ms. Carlquist moved to adopt the proposed amendments to Rules 804 and 807. Judge Westmoreland seconded. The motion carried.

4. Discussion: New Project Proposal to Simplify Rules of Evidence for Pro Se Parties

Professor Brown proposed a new long-term project to simplify the rules of evidence for self-represented litigants, particularly in debt collection cases, which make up approximately 60% of the civil docket, and where almost all of the defendants are unrepresented. The goal is not to eliminate the rules but to make them more accessible, such as simplifying hearsay rules or allowing a more active role for judges. This may involve a new, specific set of rules for debt collection or small claims calendars. Professor Brown will draft a formal proposal to be discussed at a future meeting.

ADJOURN:

With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be held on January 13, 2026, beginning at 5:15 pm, via Webex Webinar video conferencing.

TAB 2

Rule 107. Illustrative aids.

(a) Permitted uses. The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) Use in jury deliberations. An illustrative aid is not substantive evidence and ~~must~~ will not be provided to the jury during deliberations unless:

(1) all parties consent; or

(2) the court, for good cause, orders otherwise.

(c) Record. ~~When practicable, an illustrative aid used at trial must be entered into the record.~~ If requested, the court will~~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~~will be entered into the record.

(d) Summaries of voluminous materials admitted as evidence. A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by Rule 1006.

Effective: --/--/----

2025 Advisory Committee Note. This rule was developed based on the new Rule 107 of the Federal Rules of Evidence, which provides guidance on the use of illustrative aids. Illustrative aids are sometimes referred to as "pedagogical evidence" in Utah case law.

The intent of the rule is to clarify the distinction between substantive evidence and illustrative aids, and to provide the court with a balancing test for the use of illustrative aids. Historically, courts have used the term "demonstrative evidence" to refer to both admissible, substantive evidence and inadmissible, non-substantive evidence. For

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example, in *State v. Perea*, the term "demonstrative evidence" is defined as evidence "that is meant only to illustrate a witness's testimony" and "carries no independent probative value in and of itself, but aids a jury in understanding difficult factual issues." *State v. Perea*, 2013 UT 68, ¶ 45, 322 P.3d 624. With the passage of URE 107, the evidence at issue in *Perea* should now be referred to as an "illustrative aid" and not "demonstrative evidence." The reason for this change in terminology is that illustrative aids are not substantive evidence. Unlike demonstrative evidence, illustrative aids are not subject to the hearsay rules, authentication requirements, and other evidentiary screens.

Illustrative aids are not substantive evidence because they are not offered to prove a disputed fact; however, they can be critically important in helping the trier of fact understand witness testimony. Examples of illustrative aids may include drawings, timelines, photos, diagrams, anatomical models, video depictions, charts, graphs, or computer simulations that are used for the narrow purpose of educating the jury on background issues that are not disputed. Given that some illustrative aids could also be used substantively to prove a disputed fact, the use of illustrative aids requires regulation. Therefore, this rule requires the court to balance the value of the illustrative aid against its potential dangers. Potential dangers include appearing to be substantive evidence of a disputed event, oversimplifying matters, causing undue prejudice, or misleading or confusing the jury. If the court does allow the aid to be presented at a jury trial, the adverse party may ask to have the jury instructed about the limited purpose for which the illustrative aid may be used.

Many courts require advance disclosure of illustrative aids, as a means of safeguarding and regulating their use. Ordinary discovery procedures concentrate on the evidence that will be presented at trial, so illustrative aids are not usually subject to discovery. Their sudden appearance may not give sufficient opportunity for analysis by other parties, particularly if they are complex. That said, there is a wide variety of illustrative aids, and a wide variety of circumstances under which they might be used. In addition,

Commented [JJMP1]: This should probably be revised to more closely match the language in the rule.

in some cases, advance disclosure may improperly preview witness examination or attorney argument. The amendment therefore leaves it to trial judges to decide whether, when, and how to require advance notice of an illustrative aid.

This rule is intended to govern the use of an illustrative aid at any point in the trial, including in opening statement and closing argument. While an illustrative aid is not evidence, if it is used at trial it must be marked as an exhibit and made part of the record, unless that is not reasonable under the circumstances (e.g., it is a piece of jewelry or expensive anatomical model).

Commented [JJMP2]: There's a lot of instruction in this note. I think it's important to discuss whether that's appropriate and whether this is the best place for it.

Rule 107. Illustrative aids.

(a) Permitted uses. The court may allow a party to present an illustrative aid to help the trier of fact understand the evidence or argument if the aid's utility in assisting comprehension is not substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or wasting time.

(b) Use in jury deliberations. An illustrative aid is not substantive evidence and ~~must~~ will not be provided to the jury during deliberations unless:

(1) all parties consent; or

(2) the court, for good cause, orders otherwise.

(c) Record. ~~When practicable, an illustrative aid used at trial must be entered into the record.~~ If requested, the court will~~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~~will be entered into the record.

(d) Summaries of voluminous materials admitted as evidence. A summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by Rule 1006.

Effective: --/--/----

2026 Advisory Committee Note. ~~This rule was developed based on the new Rule 107 of the Federal Rules of Evidence, which provides guidance on the use of illustrative aids. Illustrative aids are sometimes referred to as "pedagogical evidence" in Utah case law.~~ This rule is adapted from Federal Rule of Evidence 107 to provide clarity on the use of illustrative aids, which Utah case law has sometimes referred to as "pedagogical evidence."

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~~The intent of the rule is to clarify the distinction between substantive evidence and illustrative aids, and to provide the court with a balancing test for the use of illustrative aids. Historically, courts have used the term "demonstrative evidence" to refer to both admissible, substantive evidence and inadmissible, non-substantive evidence. For example, in *State v. Perea*, the term "demonstrative evidence" is defined as evidence "that is meant only to illustrate a witness's testimony" and "carries no independent probative value in and of itself, but aids a jury in understanding difficult factual issues." *State v. Perea*, 2013 UT 68, ¶ 45, 322 P.3d 624. With the passage of URE 107, the evidence at issue in *Perea* should now be referred to as an "illustrative aid" and not "demonstrative evidence." The reason for this change in terminology is that illustrative aids are not substantive evidence. Unlike demonstrative evidence, illustrative aids are not subject to the hearsay rules, authentication requirements, and other evidentiary screens.~~The primary purpose of Rule 107 is to distinguish between substantive evidence (which is offered to prove a fact) and illustrative aids (which are used solely to assist the trier of fact in understanding evidence or arguments). Historically, Utah courts used the term "demonstrative evidence" to describe both. For example, in *State v. Perea*, 2013 UT 68, ¶ 45, 322 P.3d 624, the court described evidence that "carries no independent probative value" but "aids a jury in understanding" as demonstrative evidence. Under Rule 107, such items are now formally classified as "illustrative aids."

Illustrative aids are not substantive evidence because they are not offered to prove a disputed fact. Thus, illustrative aids are not subject to the hearsay rules, authentication requirements, and other evidentiary screens.

Given that some illustrative aids could also be used substantively to prove a disputed fact, the use of illustrative aids requires regulation. Therefore, this rule requires the court to balance the value of the illustrative aid against its potential dangers, including the danger of unfair prejudice, confusing the issues, misleading the jury, undue delay or wasting time. ~~Potential dangers include appearing to be substantive evidence of a disputed event, oversimplifying matters, causing undue prejudice, or misleading or~~

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~~confusing the jury; however, they can be critically important in helping the trier of fact understand witness testimony.~~

Examples of illustrative aids include drawings, timelines, photos, diagrams, anatomical models, video depictions, charts, graphs, or computer simulations that are used for the purpose described in this rule. ~~If the court does allow the aid to be presented at a jury trial, the adverse party may ask to have the jury instructed about the limited purpose for which the illustrative aid may be used.~~

~~Many courts require advance disclosure of illustrative aids, as a means of safeguarding and regulating their use. Ordinary discovery procedures concentrate on the evidence that will be presented at trial, so illustrative aids are not usually subject to discovery. Their sudden appearance may not give sufficient opportunity for analysis by other parties, particularly if they are complex. That said, there is a wide variety of illustrative aids, and a wide variety of circumstances under which they might be used. In addition, in some cases, advance disclosure may improperly preview witness examination or attorney argument. The amendment therefore leaves it to trial judges to decide whether, when, and how to require advance notice of an illustrative aid.~~

~~This rule is intended to govern the use of an illustrative aid at any point in the trial, including in opening statement and closing argument. While an illustrative aid is not evidence, if it is used at trial it must be marked as an exhibit and made part of the record, unless that is not reasonable under the circumstances (e.g., it is a piece of jewelry or expensive anatomical model).~~

Users of this rule should consult other applicable rules for the logistics of using illustrative aids at trial:

For requirements regarding advance notice and pretrial disclosure, *see* Rule 26 of the Utah Rules of Civil Procedure and Rule 16 of the Utah Rules of Criminal Procedure.

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Commented [JJMP2]: There's a lot of instruction in this note. I think it's important to discuss whether that's appropriate and whether this is the best place for it.

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Commented [JW3]: 26(a)(5)(requiring, among other things, "demonstrative exhibits," to be served "at least 28 days before trial"); see also Utah R. Civ. P. 26, Comm. Notes ("Experts frequently will prepare demonstrative exhibits or other aids to illustrate the expert's testimony at trial, and the costs for preparing these materials can be substantial. For that reason, these types of demonstrative aids may be prepared and disclosed later, as part of the Rule 26(a)(4) [sic] pretrial disclosures when trial is imminent."

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Commented [JW4]: 16(a)(5)(B) and 16(b)(3)(B) require, "no later than 14 days, or as soon as practicable, before trial," disclosure of exhibits the prosecution and defense "intend[] to introduce at trial." Is clarification needed to establish that illustrative aids would be considered "introduced" if presented at trial, despite not being substantive evidence?

For the marking, custody, and handling of illustrative aids, *see* Rule 4-206 of the Utah Code of Judicial Administration.

For the jury's use of materials during deliberations, *see* Rule 47 of the Utah Rules of Civil Procedure and Rule 17 of the Utah Rules of Criminal Procedure.

For the preservation of the record for appeal, *see* Rule 11 of the Utah Rules of Appellate Procedure.

For limiting instructions regarding the non-substantive nature of the aid, *see* Rule 51 of the Utah Rules of Civil Procedure and Rule 19 of the Utah Rules of Criminal Procedure.

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Commented [JW5]: 47(n) ("Exhibits taken by jury; notes. Upon retiring for deliberation the jury may take with them the instructions of the court and all exhibits which have been received as evidence in the cause, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.")

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Commented [JW6]: 17(k) ("Deliberations. Upon retiring for deliberation, the jury may take with them the instructions of the court and all exhibits which have been received as evidence, except exhibits that should not, in the opinion of the court, be in the possession of the jury, such as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes with them during deliberations. As necessary, the court shall provide jurors with writing materials and instruct the jury on taking and using notes.")

Commented [JW7]: 11(a) ("Composition of the record on appeal. The record on appeal consists of the documents and exhibits filed in or considered by the trial court, including the presentence report in criminal matters, and the transcript of proceedings, if any.")

11(b) ("Preparing, paginating, and indexing the record. (1) Preparing the record. On the appellate court's request, the trial court clerk will prepare the record in the following order: . . .(D) a list of all exhibits offered in the proceeding; (E) all exhibits; . . .")

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Commented [JW8]: 51(a) and (b) (preliminary and interim instructions as "will assist the juror in comprehending the case") and (c) (final instructions "as may be needed")

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Commented [JW9]: 19(a) and (b) (preliminary and interim instructions as "will assist the jurors in comprehending the case")

Rule 1006. Summaries to ~~P~~prove ~~C~~content.

~~The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time or place. And the court may order the proponent to produce them in court.~~

(a) Summaries of voluminous materials admissible as evidence. The court may admit as evidence a summary, chart, or calculation offered to prove the content of voluminous admissible writings, recordings, or photographs that cannot be conveniently examined in court, whether or not they have been introduced into evidence.

(b) Procedures. The proponent must make the underlying originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

(c) Illustrative aids not covered. A summary, chart, or calculation that functions only as an illustrative aid is governed by Rule 107.

Effective: --/--/----

2025 Advisory Committee Note. The ~~language of this~~ rule has been amended to parallel ~~in conformity with~~ recent amendments to Rule 1006 of the~~the~~ F~~f~~ederal R~~r~~ules of Evidence.

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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. This rule is the federal rule, verbatim.

Original Advisory Committee Note. This rule is the federal rule, verbatim, and is comparable to the substance of Rule 70(f), Utah Rules of Evidence (1971).

TAB 3

Rule 702. Testimony by ~~E~~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~~ are reliably applied to the facts, or, if not applied to the facts, are offered to assist the factfinder in understanding 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.

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).

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

Section (c) retains limited features of the traditional *Frye* test for expert testimony. Generally accepted principles and methods may be admitted based on judicial notice. The nature of the "work at hand" is especially important here. It might be important in some cases for an expert to educate the factfinder about general principles, without

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attempting to apply these principles to the specific facts of the case. The rule recognizes that an expert on the stand may give a dissertation or exposition of principles relevant to the case, leaving the trier of fact to apply them to the facts. Proposed expert testimony that seeks to set out relevant principles, methods or techniques without offering an opinion about how they should be applied to a particular array of facts will be, in most instances, more eligible for admission under section (c) than case specific opinion testimony. There are, however, scientific or specialized methods or techniques applied at a level of considerable operational detail that have acquired sufficient general acceptance to merit admission under section (c).

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

Section (b) adopts the three general categories of inquiry for expert testimony contained in the federal rule. Unlike the federal rule, however, the Utah rule notes that the proponent of the testimony is required to make only a "threshold" showing. That "threshold" requires only a basic foundational showing of indicia of reliability for the testimony to be admissible, not that the opinion is indisputably correct. When a trial court, applying this amendment, rules that an expert's testimony is reliable, this does not necessarily mean that contradictory expert testimony is unreliable. The amendment is broad enough to permit testimony that is the product of competing principles or methods in the same field of expertise. Contrary and inconsistent opinions may simultaneously meet the threshold; it is for the factfinder to reconcile or choose between the different opinions. As such, this amendment is not intended to provide an excuse for an automatic challenge to the testimony of every expert, and it is not contemplated that evidentiary hearings will be routinely required in order for the trial judge to fulfill his role as a rationally skeptical gatekeeper. In the typical case, admissibility under the rule

Commented [JW1]: The Justices are concerned that this line is no longer accurate. They would like a new Committee Note explaining the change, as well as the reasons for the current proposed substantive amendments to the rule.

may be determined based on affidavits, expert reports prepared pursuant to Rule 26 of the Utah Rules of Civil Procedure~~Utah R. Civ. P. 26~~, deposition testimony and memoranda of counsel.