



Utah Supreme Court Rules of Evidence Committee

Meeting Agenda

Nicole Salazar-Hall, Chair

Location: [WebEx](#) Meeting

Date: February 10, 2026

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

Action: Welcome and approve January Minutes	Tab 1	Nicole Salazar-Hall
Action: URE 702 Subcommittee Report	Tab 2	Ryan McBride
Update: URE 107 (awaiting further direction) and URE 1006 (awaiting Rule 107)		Jace Willard
Update: Website Feature re Historical Rules (rough prototype done)		Jace Willard
Update: URE 804 and 807 (going to Supreme Court for approval to go out for comment)		Nicole Salazar-Hall

[Committee Web Page](#)

Meeting Schedule:

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 approved; coordinating with other implicated Rules Committees

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

**January 13, 2026
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 David Billings Wendy Brown Clint Heiner Hon. Linda Jones Nathan Lyon Scott Lythgoe Ryan McBride Hon. Richard McKelvie Benjamin Miller Hon. Coral Sanchez Hon. Rick Westmoreland Dallas Young	Teneille Brown Sarah Carlquist Adam Merrill Andres Morelli Rachel Sykes		Jace Willard

1. Welcome and Approval of Minutes

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

2. Update: URE 404, 408, 510

Ms. Salazar-Hall noted that the Supreme Court has given final approval to the Committee's proposed amendments to each of the above rules.

3. Discussion: URE 107 and 1006

Ms. Salazar-Hall indicated that the Court also looked favorably on the Committee's proposed amendments to Rule 1006, but approval to publish those amendments for public comment will not be given until a related new Rule 107 is also ready to be published. As to Rule 107, the Court primarily expressed concern about the length and instructional tone of the proposed Committee note. The Committee reviewed a revised draft Committee note prepared by Mr.

Willard with AI assistance. The Committee generally supported the revised draft as responsive to the Court's concerns. However, one sentence, drawn largely from the Committee's prior draft note, was flagged due to concerns about its accuracy: "Thus, illustrative aids are not subject to the hearsay rules, authentication requirements, and other evidentiary screens." The Committee voted to approve the revised draft with that sentence removed. Mr. Willard will circulate the new draft Rule 107 to the other committees whose rules are referenced at the end of the draft note. When all of those committees have prepared any appropriate related draft revisions for their rules, it is anticipated that all such proposed changes will be submitted together to the Court for approval.

4. Discussion: URE 702

Ms. Salazar-Hall advised that the Court also returned draft revisions to Rule 702, asking that the Committee prepare a note to explain the proposed amendments aimed at the admissibility of blind expert testimony, as well as to explain whether lines 69-70 (on the redline draft) of the original Committee note for this rule are still accurate. The Rule 702 Subcommittee (comprised of Msrs. Heiner, Morelli, Miller, Lythgoe, McBride, and Young) will prepare the requested draft.

5. Update: URE 804 and 807

Per the Committee's prior recommendations, proposed amendments for the above rules will be going to the Supreme Court for approval to go out for public comment. The Court has disapproved of language in Committee notes indicating that changes are made "in conformity with" amendments to the federal rules, so such language will be removed when these rules go up.

6. Requested Update re Historical Rules on Court Website

Mr. Young noted that he has previously requested that the courts add a feature to their website to permit convenient access to historical versions of court rules, similar to what is done with the code on the legislature's site. Mr. Willard indicated that the request has been submitted. He will follow up on the status of that request.

ADJOURN:

With no further items to discuss, Ms. Salazar-Hall adjourned the meeting. The next meeting will be held on February 10, 2026, beginning at 5:15 pm, via Webex Webinar video conferencing.

TAB 2

1 **Rule 702. Testimony by ~~E~~xperts.**

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

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

9 ~~(b)(1)~~ are reliable,

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

11 ~~(b)(3) have been~~ are reliably applied to the facts, or, if not applied to the facts, are
12 offered to assist the factfinder in understanding principles relevant to the case.

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

17 _____

18 **2011 Advisory Committee Note.** The language of this rule has been amended as part of
19 the restyling of the Evidence Rules to make them more easily understood and to make
20 class and terminology consistent throughout the rules. These changes are intended to be
21 stylistic only. There is no intent to change any result in any ruling on evidence
22 admissibility.

23 **Original Advisory Committee Note.** Apart from its introductory clause, part (a) of the
24 amended Rule recites verbatim Federal Rule 702 as it appeared before it was amended in
25 2000 to respond to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). The
26 2007 amendment to the Rule added that introductory clause, along with parts (b) and (c).

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27 Unlike its predecessor, the amended rule does not incorporate the text of the Federal Rule.
28 Although Utah law foreshadowed in many respects the developments in federal law that
29 commenced with *Daubert*, the 2007 amendment preserves and clarifies differences
30 between the Utah and federal approaches to expert testimony.

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

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

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

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

69 Section (b) adopts the three general categories of inquiry for expert testimony contained
70 in the federal rule. Unlike the federal rule, however, the Utah rule notes that the
71 proponent of the testimony is required to make only a "threshold" showing. That
72 "threshold" requires only a basic foundational showing of indicia of reliability for the
73 testimony to be admissible, not that the opinion is indisputably correct. When a trial
74 court, applying this amendment, rules that an expert's testimony is reliable, this does not
75 necessarily mean that contradictory expert testimony is unreliable. The amendment is
76 broad enough to permit testimony that is the product of competing principles or methods
77 in the same field of expertise. Contrary and inconsistent opinions may simultaneously
78 meet the threshold; it is for the factfinder to reconcile ~~—~~ or choose between ~~—~~ the
79 different opinions. As such, this amendment is not intended to provide an excuse for an
80 automatic challenge to the testimony of every expert, and it is not contemplated that
81 evidentiary hearings will be routinely required in order for the trial judge to fulfill his
82 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.

83 may be determined based on affidavits, expert reports prepared pursuant to [Rule 26 of](#)
84 [the Utah Rules of Civil Procedure](#)~~Utah R. Civ. P. 26~~, deposition testimony and
85 memoranda of counsel.

86

UTAH SUPREME COURT ADVISORY COMMITTEE



RULES OF EVIDENCE

January 28, 2026

Rule 702 Subcommittee report

In attendance: Clint Heiner, Dallas Young, Ryan McBride, Scott Lythogoe, Andres Morelli

Dear Nicole Salazar-Hall,

On January 28, 2026, the Rule 702 subcommittee met to address the Supreme Court's input on the proposed amendment to Rule 702. The Supreme Court's comment, as recorded by Jace Willard is:

The Justices are concerned that this line [line 79-80] 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.

The subcommittee agreed to refer two proposed committee notes to the committee.

Proposal 1:

The language of Rule (b)(3) has been amended to clarify that experts are not required to apply their testimony to the facts of the case. This clarification is intended to accommodate the use of so-called "blind experts," who give testimony within their expertise without being asked to apply it to the specific facts at issue. While experts may, in appropriate circumstances, connect their testimony to the facts, the ultimate application of expert testimony remains the responsibility of the trier of fact.

Proposal 2:

The language of Rule (b)(3) has been amended to clarify that experts are not required to apply their testimony to the facts of the case. This clarification is intended to accommodate the use of so-called "blind experts," who give testimony within their expertise without

being asked to apply it to the specific facts at issue. While experts may connect their testimony to the facts of the case, the rule does not require it.

The subcommittee did not adopt any language to address the Supreme Court's concern over the continued accuracy of lines 79-80.

Sincerely,

/s/ Ryan McBride