

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

MEETING MINUTES

**June 9, 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>
David Billings Teneille Brown Wendy Brown Sarah Carlquist Clint Heiner Hon. Linda Jones Nathan Lyon Scott Lythgoe Hon. Tad May Ryan McBride Adam Merrill Andres Morelli Nicole Salazar-Hall Hon. Rick Westmoreland Dallas Young	Benjamin Miller Hon. Coral Sanchez Rachel Sykes	Jacqueline Carlton	Jace Willard

1. Welcome and Approval of Minutes

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

2. URE 807: New Committee Note

Mr. Merrill presented two alternative drafts from the Rule 807 subcommittee. The Court sent the rule back to the Committee due to concerns that the proposed amendments (following the FRE amendments) would be inconsistent with existing Utah law, specifically *State v. Buttars*, 2020 UT App 87, ¶¶ 32-36. The first alternative leaves all of the proposed amendments intact, except that in paragraph (a) the phrase “not admissible under” is changed to “not specifically covered by.” A draft committee note highlights this difference. The second alternative would track the FRE amendments entirely and include a committee note pointing out that the amendments now permit courts to consider whether statements were a “near miss” under Rule

803 or 804.

Ms. Salazar-Hall favored the first alternative. She recalled that the Court appeared reluctant to change the *Buttars* rule, preferring to keep it to avoid confusion, particularly because *Buttars* remains ongoing. Ms. Carlquist indicated her understanding that the Court is not averse to making a change, but would like to be careful and deliberate about doing so; the Court is open to hearing whether and why a change would be good policy.

Mr. Young asserted that *Buttars* reflects the Court's longstanding textualist approach and bars "near misses." He doubted that the Court would be inclined to change course. Mr. Merrill took the view that *Buttars* may not categorically prohibit invoking the residual exception for a near miss. Professor Brown pointed to paragraph 36 of *Buttars* as supporting this view, suggesting that parties may invoke the exception if they can provide a compelling explanation for admitting records under the residual exception despite not meeting the criteria for another specific exception.

Based on the Court's prior feedback, and the current and upcoming changes to the composition of the Court, with four new justices soon, Ms. Carlquist moved to adopt the subcommittee's first alternative and to draft a memo providing further explanation and context regarding the issues involved. The memo would help orient the new justices regarding the Committee's work on Rule 807, *Buttars*, and the FRE changes. Professor Brown seconded. The motion carried. Ms. Carlquist will send Mr. Merrill an old, unrelated Court Conference memo showing how such memos are formatted.

Ms. Salazar-Hall noted that the Court is only addressing urgent matters this month. No urgent matters have been identified for the Committee. The Committee's pending rule requests will be addressed when the new justices are able to join the Court Conference.

3. URE 107 and 1006: Coordination Effort

Regarding the effort to coordinate the proposed Rule 107 changes with other implicated rules committees, Mr. Willard gave a brief update, noting he has met with two other rules committees about the proposed changes so far and will be attending another committee's meeting next month. He will bring back all related Rule 107 feedback in October.

4. Fond Farewell – Judge Jones

Ms. Salazar-Hall noted that Judge Jones has been serving on the Committee since 2007 and is concluding her final *emeritus* term this month. She will be greatly missed. Many other Committee members expressed similar feelings.

ADJOURN:

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