



Utah Supreme Court Rules of Evidence Committee

Meeting Agenda

Nicole Salazar-Hall, Chair

Location: [WebEx](#) Meeting

Date: October 13, 2026

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

Action: Welcome and Approval of June Minutes	Tab 1	Nicole Salazar-Hall
Introduction to Alex Jacobson (new AOC Staff for Committee)		Jace Willard / Alex Jacobson
Action: URE 807 – draft memo explaining new draft Committee Note	Tab 2	Adam Merrill
Update and Action: URE 107 (coordination with other rules committees) and 1006	Tab 3	Jace Willard
Update: URE 404, 707, and 804 (going to Court this month)		Nicole Salazar-Hall

[Committee Web Page](#)

Meeting Schedule:

November 10, 2026

Rule Status:

URE 107 – Back from Supreme Court – new Committee Note approved; coordinating with other implicated Rules Committees

URE 404 – Amended by Legislature; going to Supreme Court for guidance

URE 702 – Back from comment; Subcommittee drafting note revisions
URE 707 – Adopted by Legislature; going to Supreme Court for guidance
URE 801 – Awaiting further federal caselaw
URE 804 – Back from comment; going to Supreme Court for final approval
URE 807 – Back from Supreme Court; Subcommittee will draft memo re new note
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

**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.

TAB 2

October [REDACTED], 2026

Hon. Jill M. Pohlman
Acting Chief Justice, Utah Supreme Court
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Re: Proposed Amendments to Utah Rule of Evidence 807 for Public Comment

The Advisory Committee on the Utah Rules of Evidence re-submits for the Court's consideration proposed amendments to Utah Rule of Evidence 807 (the residual hearsay exception).

Last February, the Committee recommended adopting the 2019 amendments to Federal Rule of Evidence 807 verbatim. In response, former members of the Court expressed concern that replacing the phrase "not specifically covered by" with "not admissible under" in URE 807(a) would overrule or cast doubt on established Utah caselaw, including *State v. Buttars*, 2020 UT App 87, without an explicit statement of intent. At the time, the Court asked the Committee to re-evaluate the proposal and clarify its intent regarding existing caselaw, including *Buttars*.

At its June 9, 2026 meeting, the Committee voted to recommend adopting the 2019 amendments to FRE 807 with one exception. Specifically, the Committee proposed retaining the phrase "not specifically covered by" (instead of "not admissible under") in URE 807(a). A redline of the proposed changes to URE 807 that highlights the federal language not being adopted is attached.

This memorandum summarizes Utah Supreme Court precedent holding that the residual exception was intended for use in "rare" cases; recent Court of Appeals decisions, including *State v. Buttars* (2020), which reversed the use of the residual exception where a category of evidence "fit" within a recognized exception but did not explicitly bar the admission of "near misses"; and the Committee's proposed text, advisory note, and recommendation to adopt the proposed amendments to FRE 807 except for preserving the "not specifically covered by" language.

I. UTAH CASELAW INTERPRETING RULE 807

A. Utah Supreme Court Precursors

Utah’s approach to the residual exception did not originate with *Buttars*; rather, it is anchored in a line of Utah Supreme Court decisions interpreting URE 807 (and former Rules 803(24) and 804(b)(5)) as a narrow catchall:

- ***State v. Nelson*, 777 P.2d 479, 482 (Utah 1989):** The Utah Supreme Court held that the residual exception “was intended for use in those rare cases where, although the out-of-court statement does not fit into a recognized exception, its admission is justified by the inherent reliability of the statement and the need for its admission.”
- ***State v. Workman*, 2005 UT 66, ¶ 12:** The Court reaffirmed that the residual exception is a catchall provision that is “to be used rarely and construed strictly.”
- ***State v. Clopten*, 2015 UT 82, ¶ 23:** The Court emphasized that Rule 807 applies only when a statement “is not specifically covered by a hearsay exception in Rule 803 or 804.”

Nonetheless, none of these cases explicitly held that “near misses” can never be considered for admission under the residual exception.

B. *State v. Buttars* (2020) and *State v. Underwood* (2026)

In *State v. Buttars*, 2020 UT App 87, the Court of Appeals applied Utah Supreme Court precedent, including *Nelson*, *Workman*, and *Clopten*, to bank records that failed the authentication requirements of the business records exception (Rules 803(6) and 902(11)). Drawing on statutory construction principles, including that the specific governs over the general, *Buttars* held that when a category of evidence “fits” within a recognized exception, a party cannot bypass foundational defects by resorting to Rule 807 and that “in the present case, it was error to admit the bank records under the residual rule without a more compelling explanation for why the business records exception would not suffice.” Nonetheless, *Buttars* stated it was “not necessarily prepared to say that parties could never seek to have business records admitted under the residual rule” *Id.*, ¶¶ 34-37.

This framework was recently reaffirmed in *State v. Underwood*, 2026 UT App 76, ¶¶ 18-23, where the Court of Appeals held that hearsay statements falling within the domain of established exceptions could not meet Rule 807’s “high bar” without showing that the statement belonged to those “rare cases” that do not fit into a recognized exception.

II. THE 2019 FEDERAL AMENDMENTS AND CASELAW INTERPRETING THE AMENDMENTS.

In 2019, numerous amendments were made to FRE 807, including replacing “not specifically covered by” with “not admissible under.” According to the Federal Advisory Committee Notes, this change was made to make clear that federal courts could consider statement that were “near-misses” under other hearsay rules:

The amendment does not alter the case law prohibiting parties from proceeding directly to the residual exception, without considering the admissibility of the hearsay under Rules 803 and 804. A court is not required to make a finding that no other hearsay exception is applicable. But the opponent cannot seek admission under Rule 807 if it is apparent that the hearsay could be admitted under another exception.

The rule in its current form applies to hearsay “not specifically covered” by a Rule 803 or 804 exception. The amendment makes the rule applicable to hearsay “not admissible under” those exceptions. *This clarifies that a court assessing guarantees of trustworthiness may consider whether the statement is a “near-miss” of one of the Rule 803 or 804 exceptions.*

FRE 807(a) (Advisory Committee Note to 2019 Amendment) (emphasis added).

Post-2019, federal circuit courts have not generally elaborated upon this aspect of the 2019 amendments to FRE 807(a) permitting consideration of near misses. The Tenth Circuit, for example, continues to instruct district courts to apply Rule 807 with caution so that it does not swallow the general rule against hearsay. *See, e.g., United States v. McFadden*, 116 F.4th 1069, 1081-82 (10th Cir. 2024) (the “residual exception should be used only in extraordinary circumstances;” “[w]e interpret the residual exception with caution so that it does not swallow the entirety of the hearsay rule”) (citations and internal quotations omitted).

III. THE COMMITTEE’S PROPOSED AMENDMENTS AND ADVISORY NOTE

To address the concerns raised by some members of the Court last February, the Committee recommends adopting all modernizing features of FRE 807 (*e.g.*, eliminating the “equivalence” test, codifying the “totality of circumstances” and corroboration standards, and adding a good-cause notice exception) while retaining the operative phrase “not specifically covered by” that this Court and the Court of Appeals have long relied on while interpreting FRE 807(a). In the Committee’s view, this approach would preserve Utah precedent, which has consistently held that the use of the residual exception is “rare,” especially where the hearsay

“fits within a recognized exception,” but has not explicitly held that “near misses” can never be admitted under the residual exception.

As noted, a complete redline of the proposed changes to URE 807 (compared to the current version of the Rule) is attached. The key proposed change to the Rule discussed herein (along with the proposed advisory committee note) is as follows:

Rule 807. Residual Exception.

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

(1) the statement 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

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

2026 Advisory Committee Note. Apart from the phrase “not specifically covered by” in Rule 807(a), the amendments track changes to the federal rule, verbatim.

V. CONCLUSION

The proposed amendments modernize URE 807 consistent with federal evidentiary practice while not overruling or casting doubt upon this Court and the Utah Court of Appeals’ long-standing textual skepticism of the residual exception. The Committee respectfully requests that the Court approve publishing the amendments to URE 807 for public comment.

TAB 3

1 **Rule 107. Illustrative aids.**

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

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

8 (1) all parties consent; or

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

10 **(c) Record.** ~~When practicable, an illustrative aid used at trial must be entered into the~~
11 ~~record.~~ If requested, the court will permit a party to describe the illustrative aid to be
12 included in the trial record, and if practicable and upon request, the illustrative aid itself
13 will be entered into the record.

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

17 *Effective: --/--/----*

18
19 **2026 Advisory Committee Note.** This rule is adapted from Federal Rule of Evidence 107
20 to provide clarity on the use of illustrative aids, which ~~are~~ Utah case law has sometimes
21 referred to as "pedagogical evidence."

22 The primary purpose of Rule 107 is to distinguish between substantive evidence (which
23 is offered to prove a fact) and illustrative aids (which are used solely to assist the trier of
24 fact in understanding evidence or arguments). Historically, Utah courts used the term
25 "demonstrative evidence" to describe both. For example, in *State v. Perea*, 2013 UT 68, ¶

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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.

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.

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.

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.

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.

Commented [JW1]: 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.”)

Commented [JW2]: 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?

Commented [JW3]: 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.”)

Commented [JW4]: 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 [JW5]: 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; . . .”)

49 [For limiting instructions regarding the non-substantive nature of the aid, see Rule 51 of](#)
50 [the Utah Rules of Civil Procedure and Rule 19 of the Utah Rules of Criminal Procedure.](#)

Commented [JW6]: 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”)

Commented [JW7]: 19(a) and (b) (preliminary and interim instructions as “will assist the jurors in comprehending the case”)