

**STATE OF VERMONT
VERMONT SUPREME COURT
JUNE TERM, 2026**

Promulgation Order Correcting Order Amending Rule 615 of the Vermont Rules of Evidence

Pursuant to the Vermont Constitution, Chapter II, § 37, and 12 V.S.A. § 1, it is hereby ordered:

1. That this Court’s order amending Rule 615 of the Vermont Rules of Evidence, promulgated on February 10, 2026, effective July 1, 2026, be replaced with the following order that contains that same amended rule language but updates the Reporter’s Notes (deleted matter struck through; new matter underlined):

RULE 615. EXCLUSION OF WITNESSES

(a) At the request of a party the court shall order witnesses excluded so that they cannot hear the trial testimony of other witnesses, and it may make the order of its own motion; after a witness’s trial testimony has been completed, however, the witness may remain within the courtroom, even if the witness subsequently may be called upon by the other party or recalled in rebuttal, unless a party shows good cause for the witness to be excluded. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) one ~~an~~ officer or employee of a party which is not a natural person if that officer or employee has been designated as its representative by its attorney, ~~or~~ (3) any ~~a~~ person whose presence is shown by a party to be essential to the presentation of the party’s cause~~-,~~ or (4) a person authorized by statute to be present.

(b) A court may also make additional orders, such as prohibiting disclosure of trial testimony to witnesses who are excluded from the courtroom and prohibiting excluded witnesses from accessing trial testimony. Any additional order entered under this subdivision shall specify the witnesses who are subject to the order, and the content of the prohibited disclosure.

Reporter’s Notes—2026 Amendment

The amendment follows similar amendments to Federal Rule of Evidence 615. Although expert witnesses are not specifically identified in the text of the rule, courts “commonly approve the designation of experts as essential” under Federal Rule 615(a)(3). 29 C. Wright & A. Miller, Federal Practice and Procedure § 6245 (2d ed. 2025). Such a designation does not undermine the purposes of the rule, because experts typically are not testifying about factual matters within their personal knowledge, but rather providing an opinion based upon testimony and information supplied by others. Id.

Subdivision (a) is amended to specify that it applies to “trial” testimony to limit the applicability of the rule to court proceedings and exclude application to depositions, which are controlled by the civil rules. This distinguishes the Vermont rule from its federal counterpart. Use of the word “trial” is meant to provide the court with broad authority to regulate disclosure of courtroom testimony to witnesses

during evidentiary hearings that are being conducted pursuant to these rules.

New subdivision (b) clarifies that a court issuing a sequestration order may also “prohibit excluded witnesses from learning about, obtaining, or being provided with trial testimony.” Advisory Committee Notes—2023 Amendments, F.R.E. 615. “The rule gives the court discretion to determine what requirements, if any, are appropriate in a particular case to protect against the risk that witnesses excluded from the courtroom will obtain trial testimony.” *Id.* A court considering such an order should ensure that the scope of any order is tailored to the core purpose of the rule of preventing witnesses from tailoring their testimony to the evidence presented at trial and does not improperly intrude upon trial preparation or the attorney-client relationship. *Id.*

2. That this rule is prescribed and promulgated effective **July 1, 2026**. The Reporter’s Notes are advisory.

3. That the Chief Justice is authorized to report this rule to the General Assembly in accordance with the provisions of 12 V.S.A. § 1, as amended.

Dated in Chambers at Montpelier, Vermont, this 23rd day of June, 2026.



Signed by the Vermont Supreme Court

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

Christina E. Nolan, Associate Justice

Michael P. Drescher, Associate Justice