

VERMONT SUPREME COURT
Advisory Committee on the Rules of Evidence
2020-2024 Annual Report
January 24, 2025

The Advisory Committee on the Rules of Evidence submits this report to the Vermont Supreme Court pursuant to Administrative Order No. 23. This report covers the committee's activities during the calendar years 2020, 2021, 2022, 2023, and 2024. During this period, the committee convened on the following dates: April 14, 2022; July 15, 2022; October 28, 2022; February 10, 2023; May 12, 2023; September 15, 2023; January 19, 2024; May 3, 2024; and September 13, 2024.

During that time, the committee membership changed from a committee of 10 members to a committee of 13 members in order to further the goals of practice-area diversity, geographic diversity, and demographic diversity. Attys. Boylan and McAndrew retired from the committee during that time, and Attys. Chater, Donnelly, Evers, Mansfield, Pahl, and Sullivan joined the committee. Judges Kline and Pacht also retired from the committee, and Judge Novotny joined the committee. Atty. Corbett became chair of the committee in 2022 and remained as chair following his appointment as a judge. Professor Giminez retired as reporter and was replaced by Professor Rushlow. Professor Rushlow then retired as reporter in 2024, and the role of reporter is currently vacant.

Amendments Promulgated by the Court

Vermont Rule of Evidence 807. Following much discussion, Rule 807 was amended to (1) correct constitutional deficiencies identified by *State v. Bergquist*, 2019 VT 17, 210 Vt. 102; (2) correct an earlier amendment related to the term “mental illness,” which had been meant to make the rule consistent with efforts to eliminate offensive language, but which had resulted in unintended substantive consequences; and (3) clarify the court’s discretion with respect to the use of two-way closed-circuit television proceedings. The amended rule was promulgated on November 7, 2022, and became effective on January 9, 2023.

Vermont Rules of Evidence 104, 106, 301, 303, 404, 405, 411, 502, 503, 504, 505, 509, 601, 602, 603, 604, 606, 607, 608, 610, 611, 612, 613, 615, 705, 706, 801, 803, 804, 806, 902, 1004, and 1007. The rules were amended to remove gendered terms and pronouns, and some small stylistic changes were also made. The amended rules were promulgated on August 12, 2024, and became effective on January 1, 2025.

Pending Proposed Rules

Vermont Rule of Evidence 502. The proposed amendment extends an evidentiary privilege to communications between a client and a lawyer referral and information service made for the purpose of seeking professional legal services. Nothing about the proposed amendment is intended to affect the rules of professional conduct or otherwise define what constitutes an attorney-client relationship. Comments on the proposed rule were due by December 9, 2024.

Matters Remaining on Committee's Agenda

Vermont Rule of Evidence 106. Following a similar amendment to the Federal Rules of Evidence, the Committee has proposed an amendment that clarifies that, in situations where fairness requires completion, completing statements are admissible over a hearsay objection. Although the Committee is not aware of the existing rule being misused in Vermont courts, the federal rules amendment has been celebrated as a “much needed” resolution of a persistent problem. See 21A Wright & Miller, Federal Practice and Procedure: Evid. 2d § 5078. The Committee has unanimously recommended that the proposed rule be forwarded to the Vermont Supreme Court for consideration as to whether the proposed rule should be published for public comment.

Vermont Rule of Evidence 615. Following a similar proposed amendment to the Federal Rules of Evidence, the Committee is considering amending Rule 615 to clarify that a trial court has authority to prohibit disclosure of trial testimony to witnesses who have been excluded from the courtroom, and to prohibit excluded witnesses from accessing trial testimony.

Vermont Rule of Evidence 702. Following amendments to Federal Rules of Evidence 702, which purported to clarify the standards for admitting expert testimony, the Committee is considering whether comparable amendments should be made to Vermont Rule of Evidence 702. At this time, the importance of the federal amendments to the operation of the rule remains unclear.

Conclusion

The Committee wishes to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules, and others who have participated in the rule-making process through their thoughtful suggestions and comments. In particular, thanks are due to Associate Justice and Supreme Court Liaison Hon. Harold Eaton, State Court Administrator Teri Corsones, Deputy Clerk and Staff Attorney Emily Wetherell, Programs Administrators Monica Bombard and Deb Laferriere, and others who have provided their assistance. The committee wishes to especially thank John Boylan, Karen McAndrew, Scot Kline, and John Pacht for their long and valued service and guidance as members, and Elizabeth Miller for her service and guidance as committee chair. Finally, the committee thanks Professors Giminez and Rushlow for their extensive and invaluable contributions as reporters.

Respectfully submitted,

Hon. H. Dickson Corbett, Committee Chair