

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON THE RULES OF EVIDENCE
SEPTEMBER 13, 2024 MINUTES**

The Vermont Advisory Committee on the Rules of Evidence held a virtual meeting on September 13, 2024 at 2:00 p.m. via Microsoft Teams. The following members were present at the meeting: Dickson Corbett, Beth Novotny, Pamela Marsh, Marshall Pahl, Cristina Mansfield, John Evers, Ben Chater, Liz Miller, and Claudine Safar. The following member of the public was present at the meeting: Maia Young.

The minutes from the May 2024 meeting were approved.

Old Business

Amendments to V.R.E. 502, Lawyer Referral Privilege. Judge Corbett reported that proposed amendments to Vermont Evidence Rule 502 regarding the lawyer-referral privilege were submitted to the Vermont Supreme Court.

Amendments to V.R.E. 106, Rule of Completeness. At the last meeting, the committee approved amendments to Rule 106. Judge Corbett will prepare the proposed amendments and submit to the Vermont Supreme Court.

Amendments to V.R.E. 615, Exclusion of Witnesses. A subcommittee consisting of Attorneys Safar, Pahl, and Evers presented information about a federal split of authority as to whether judges have authority to prohibit trial counsel from disclosing trial testimony to sequestered witnesses. The federal rule has been amended to clarify that judges have such authority. Although concerns were expressed about whether a broadly-stated rule would interfere with ordinary trial preparation, or with the ability of corporate counsel to share information with corporate witnesses prior to depositions or trial testimony, the subcommittee felt that it was important for the Vermont rule to clarify that Vermont judges have the authority to regulate disclosure of courtroom testimony to sequestered trial witnesses. Revisions were adopted and circulated to the committee for final review and vote at the next meeting.

New Business

Report from Committee on Artificial Intelligence and the Courts. Attorney Miller has been designated to serve as the Evidence Committee's delegate on the newly-formed Vermont Committee on Artificial Intelligence and the Courts. Attorney Miller reported to the Evidence Committee that the AI Committee is looking for information about what evidence rules may be impacted by advances in artificial-intelligence technology. In an initial discussion, several concerns were raised about Rule 104 (the extent to which conditional facts may need further review if they are generated by machine-learning methods), Rule 702 (the extent to which an expert opinion may include reliance upon large language models or machine-learning methods), Rule 802 (the extent to which AI may generate out-of-court statements), Rule 803 (the extent to which business records may include information generated by artificial intelligence), Rules 901 and 902

(the extent to which authentication rules need to account for the authenticity of AI-generated information), and Rule 1006 (summaries generated by artificial intelligence).

Public Comment

V.R.E. 403, Introduction of Lyrics and Black Expression as Evidence. A recent graduate of Vermont Law and Graduate School, Maia Young, presented to the committee about her work on the courtroom uses of lyrics and other forms of Black expression as character evidence. An example was given about a specific instance in Vermont when a rap video was introduced in a courtroom to show that a specific person was not a responsible person for purposes of a bail hearing. Ms. Young circulated written materials regarding information and proposals from other states. The committee agreed to review the materials and invite Ms. Young back for a subsequent meeting.

Adjourned. The next meeting of the committee will take place on January 24, 2025 at 2:00 p.m. via Microsoft Teams.