

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

Minutes of January 23, 2026 Meeting

This meeting of the Advisory Committee on the Vermont Rules of Evidence commenced at 2:11 p.m. via videoconference. Present were Committee Chair Hon. H. Dickson Corbett and Committee members Hon. Elizabeth Novotny, Hon. Pamela A. Marsh, John F. Evers, Esq., Claudine Safar, Esq., Elizabeth H. Miller, Esq., Benjamin Chater, Esq., Michelle Donnelly, Esq., and Vanessa B. Kittell, Esq. Also present (nonvoting) were Hon. Harold E. Eaton, Jr., Vermont Supreme Court Liaison, and Aliza Harrigan, Reporter. Committee members Ian C. Sullivan, Esq., Mimi Brill, Esq., Marshall Pahl, Esq., and Cristina Mansfield, Esq., were unable to attend.

I. Meeting Opening

The meeting was called to order by Judge Corbett once a quorum was present. Judge Corbett welcomed Attorney Kittell, who was recently appointed by the Court to fill the vacancy on the Committee. Judge Corbett also introduced the members to the Committee's new SharePoint site, which will serve as a permanent archive for Committee records and materials.

II. Minutes of October 2025 Meeting

Judge Marsh moved to approve the minutes of the October 3, 2025 meeting as circulated. The minutes were unanimously approved.¹

III. Ongoing Matters

A. Amendments to V.R.E. 106, Rule of Completeness

Judge Corbett noted that the Court promulgated the recommended amendments to Rule 106 on October 29, 2025. He also discussed these amendments in his December 12, 2025 testimony before the Legislative Committee on Judicial Rules (LCJR). The LCJR had no substantive questions or comments regarding the amendments. The amendments became effective on January 1, 2026, and no further action is required on the part of the Committee.

B. Amendments to V.R.E. 615, Exclusion of Witnesses

Judge Corbett relayed that the Court published the proposed amendments to Rule 615 for public comment. The comment period closed on December 29, 2025, with no comments received. Judge Corbett also discussed these amendments during his December 2025 LCJR testimony. He answered one question about the operation of the amendments from Senator Nader Hashim; the LCJR otherwise had no substantive questions or comments regarding the proposed amendments to Rule 615.

After reviewing this history, Judge Corbett moved to submit the amendments to V.R.E. 615 to the Court for promulgation. Judge Marsh seconded the motion. Attorney Donnelly noted that the Committee put a considerable amount of thought and deliberation into how the amendments should

¹ Judge Novotny was unable to attend this portion of the meeting and therefore was not present for this vote.

be worded and opined that they are ready to be moved to the next phase. The Committee then unanimously voted to submit the amendments to V.R.E. 615 to the Court for its consideration as to promulgation.²

C. Artificial Intelligence (AI) & Potential Related Amendments

Attorney Miller began the Committee’s AI discussion by reviewing the work of the Vermont Judiciary Committee on Artificial Intelligence and the Courts (VJCAIC) Subcommittee on Rules. The VJCAIC was established in 2024 and Attorney Miller was a delegate to its Subcommittee on Rules. As part of its work, the Subcommittee considered how the evidentiary rules might be implicated by new developments in AI. Ultimately, the Subcommittee did not recommend any amendments to the V.R.E. in its December 2024 report, concluding that the rules are flexible enough to address current concerns attending this new technology. Attorney Miller indicated that the Subcommittee also reviewed the work of the Federal Advisory Committee on the Rules of Evidence (Federal Committee) in this area. She noted that the Federal Committee has published proposed F.R.E. 707 for public comment, but that—while opinions are divided—the Federal Committee is currently taking a “wait-and-see” approach.

Attorney Evers queried whether the VJCAIC Subcommittee on Rules had discussed attorneys’ affirmative obligation to disclose the use of AI. Attorney Miller indicated that this had been a topic of conversation and noted that some local jurisdictions have required affirmative disclosure where AI is a component of something offered to a court. The Subcommittee, however, viewed this issue as more closely tethered to Rule 11 obligations and/or the applicable discovery rules.

Attorney Miller shared her perspective that the burden-shifting tightening in recent years may be sufficient to keep a handle on the AI issue in the short term, and that further developments on the ground might inform whether AI-related amendments to the V.R.E. are necessary in the future.

Judge Marsh reported that the Vermont Bar Association is also monitoring the AI-related work of the Federal Committee and has no firm position at this point.

Judge Marsh noted that this is a rapidly evolving area, and it may be prudent for the Committee to begin work on this issue to avoid falling behind. She further observed that it might be helpful to survey sitting judges to see whether they have encountered anything that raises concerns about the use of AI at evidentiary hearings and trials.

The Reporter summarized proposed F.R.E. 707, which would require that, where machine-generated evidence is offered without an expert witness and would be subject to F.R.E. 702 if testified to by a witness, a court may admit the evidence only if it satisfies the requirements of Rule 702(a)-(d). The Federal Committee published proposed F.R.E. 707 in order to obtain public comment but does not necessarily support promulgation at this time. The Reporter will review the public comments received by the Federal Committee after the comment period ends in February 2026. The Reporter noted that the Federal Committee has also drafted amendments to F.R.E. 901(c) intended to address “deepfakes”—AI-created evidence that is not what it purports to be—but has held the draft amendments in abeyance pending a demonstration of need.

² Judge Novotny was unable to attend this portion of the meeting and therefore was not present for this vote.

The Committee then discussed proposed F.R.E. 707. Attorney Donnelly noted that the distinction between “machine-generated evidence” and “the output of simple scientific instruments” could be difficult to apply in practice. Attorney Kittell, Attorney Evers, and Attorney Donnelly reviewed instances where AI might be a component of evidence offered in court. Committee members could not identify scenarios where machine-generated evidence of the type identified by the Federal Committee had been offered without an expert witness in Vermont. Attorney Evers noted that there is an important distinction between offering conclusions generated by a machine and offering conclusions reached by a human being who can explain them in court. Judge Corbett noted that it is difficult to imagine how the Rule 702 criteria could be satisfied without an expert witness.

Judge Corbett also noted that another area of concern may be the use of AI in the creation and custody of business records.

Attorney Donnelly and Attorney Evers both opined that the existing rules are sufficient to address current AI-related concerns and there is no urgent need to take action. Attorney Donnelly suggested that the Committee members make a conscious effort to look out for AI-related evidentiary issues and then revisit the discussion at a future meeting.

Judge Corbett observed that it would be prudent to revisit this issue at the next Committee meeting, after the Committee members have had opportunity to discuss the issue with peers and gather additional anecdotes. The Committee could then make a decision about how to proceed based on that information.

IV. New Matters

The Reporter briefly summarized other amendments proposed and promulgated to the Federal rules of Evidence since July 2022: (1) promulgated amendments to F.R.E. 702, Testimony by Expert Witnesses; (2) promulgated new F.R.E. 107, Illustrative Aids; (3) promulgated amendments to F.R.E. 1006, Summaries of Voluminous Materials Admissible; (4) promulgated amendments to F.R.E. 613(b), Extrinsic Evidence of a Witness’s Prior Inconsistent Statement; (5) promulgated amendments to F.R.E. 804(b)(3)(B), Statements Against Interest Where the Declarant is Unavailable; (6) promulgated amendments to F.R.E. 801(d)(2), Admissions by a Party-Opponent; (7) proposed amendments to F.R.E. 801(d)(1)(A), Non-hearsay and Prior Inconsistent Statements; and (8) proposed amendments to F.R.E. 609, Impeachment by Evidence of a Criminal Conviction.

Judge Corbett noted that the amendments to F.R.E. 702 had been discussed in past Committee meetings, and the informal sense was that the amendments emphasized certain aspects of the former rule, but did not substantively change it. There had not been momentum in the Committee to consider a corresponding amendment to V.R.E. 702 thus far. Judge Corbett also observed that of the public comments he has received, the most common question is whether V.R.E. 702 will be amended to conform with F.R.E. 702. He further noted that F.R.E. 613 and 801(b)(1) raise issues that the Committee might wish to address after there is a settled federal response.

Judge Corbett nominated new F.R.E. 107 and the proposed amendments to F.R.E. 609 for further discussion at the next Committee meeting with regard to the Vermont Rules. With respect to F.R.E. 107, a new rule governing the use of illustrative aids, Judge Corbett noted that this is an area of common courtroom practice where there is no directly applicable Vermont rule to which attorneys

and self-represented parties may be directed. As to F.R.E. 609, Judge Corbett observed that given the Federal Committee's significant work in this area, the time may be ripe to revisit V.R.E. 609. In particular, he noted that the Committee may want to examine: (1) whether the provision for impeachment of a witness with evidence of a felony conviction not involving untruthfulness or falsification should be reconsidered, see V.R.E. 609(a)(2); and (2) whether the 15-year time limit for introduction of evidence of a conviction should be revisited, see V.R.E. 609(b).

Rules 107 and 609 will be placed on the agenda for the next Committee meeting. Judge Corbett will lead the discussion but may call on Committee members for assistance prior to the next meeting.

Attorney Donnelly noted that the Vermont Legislature is currently reexamining V.R.E. 804a—which creates a hearsay exception for statements of certain declarants—and considering whether the age limit for child-declarants should be increased from 12 to 16. See V.R.E. 804a(a). Attorney Donnelly noted that, to the extent the Legislature does not take action, this may be worth discussion in the Committee.

The Committee members indicated that there was no other new business for review.

V. Closing

The next meeting of the Committee was set for Friday, May 8, 2026 at 2:00 p.m.

The meeting was adjourned at 3:19 p.m.

Respectfully submitted,

/s/ Aliza Harrigan
Aliza Harrigan, Reporter