

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

Minutes of May 8, 2026 Meeting

This meeting of the Advisory Committee on the Vermont Rules of Evidence commenced at 2:05 p.m. via videoconference. Present were Committee Chair Hon. H. Dickson Corbett and Committee members Hon. Elizabeth Novotny, Hon. Pamela Marsh, John F. Evers, Esq., Mimi Brill, Esq., Vanessa B. Kittell, Esq., Elizabeth H. Miller, Esq., Marshall Pahl, Esq., Michelle Donnelly, Esq., and Cristina Mansfield, Esq. Also present (nonvoting) were Hon. Christina Nolan, Vermont Supreme Court Liaison, and Aliza Harrigan, Reporter. Committee members Ian C. Sullivan, Esq., Claudine Safar, Esq., and Benjamin Chater, 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 Justice Nolan, the new Supreme Court Liaison, and introductions were made.

II. Minutes of January 2026 Meeting

The minutes of the January 23, 2026 meeting were unanimously approved as circulated.

III. Ongoing Matters

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

The Reporter provided an update on the Committee's recommended amendments to V.R.E. 615. The Supreme Court promulgated the amendments on February 10, 2026, and they will take effect on July 1, 2026. No further action is required on the part of the Committee.

B. Discussion of Potential Amendment Recommendations

1. Rule 107, Illustrative Aids

At its January 2026 meeting, the Committee briefly surveyed F.R.E. 107, a new federal rule governing the use of illustrative aids at hearings and trials. At the conclusion of that meeting, the Committee nominated for further discussion the topic of whether to recommend a corresponding addition to the Vermont Rules of Evidence. At this meeting, the Committee began that conversation by surveying the structure, origin, and purpose of F.R.E. 107 and considering the extent to which the federal approach is consistent with existing Vermont law and practice. Judge Corbett, Attorney Evers, and Attorney Pahl each conducted research on the topic and shared their findings with the Committee. The following key points emerged from this initial conversation:

- F.R.E. 107 was based on Maine's rule governing illustrative aids. The federal rule is substantially similar to the Maine rule and aims to provide the trial court and parties with a clear understanding of the purpose for which the material is being offered. This purpose, in turn, determines whether the exhibit is an illustrative aid governed by F.R.E. 107, a summary of voluminous evidence governed by F.R.E. 1006, or demonstrative evidence.

See Advisory Committee Notes—2024 Amendments, F.R.E. 107 (distinguishing between illustrative aids, summaries of voluminous admissible exhibits, and demonstrative evidence). The Federal Committee Notes define an illustrative aid as “any presentation offered not as evidence but rather to assist the trier of fact in understanding evidence or argument.” *Id.*

- The subparts of the rule are as follows:

F.R.E. 107(a): Although the wording differs slightly from F.R.E. 403, this subdivision essentially imposes a F.R.E. 403 balancing test to determine whether a party should be permitted to use an illustrative aid.

F.R.E. 107(b): Provides that an illustrative aid is not evidence and must not be provided to the jury during deliberations unless all parties consent or the court, for good cause, orders otherwise.

F.R.E. 107(c): Requires that illustrative aid used at trial must be entered into the record “[w]hen practicable.”

F.R.E. 107(d): Specifies that a summary, chart, or calculation admitted as evidence to prove the content of voluminous admissible evidence is governed by F.R.E. 1006.

- Existing Vermont practice regarding illustrative aids is more or less controlled by lore and tradition. No specific evidentiary rule governs the analysis or dictates how the materials should be marked, whether they should be admitted, or if they can be provided to the jury during deliberations. Rather, trial courts typically apply some combination of V.R.E. 403 and V.R.E. 611 in determining whether such exhibits should be allowed. The Vermont Supreme Court has never used the term “illustrative aid.” Instead, its cases in this area refer to “demonstrative evidence.” See, e.g., *State v. Brown*, 147 Vt. 324, 328, 515 A.2d 1056, 1062 (1986) (“The admission of demonstrative evidence is within the discretion of the trial court . . . If a reasonable basis exists for the court’s ruling we will not interfere.”); *State v. Orost*, 2025 VT 15, ¶¶ 35-38, 336 A.3d 345 (holding that trial court did not abuse its discretion in admitting demonstrative exhibit offered by State after conducting V.R.E. 403 balancing test and “articulat[ing] clear reasons for why the evidence was probative of the charges, not needlessly cumulative because it ensured accurate communication to the jury, and not unduly prejudicial due to the dearth of graphic detail”).

Judge Corbett then opened the floor for general discussion. Several Committee members noted that issues related to illustrative aids are likely to occur more often as trials become more visual and involve more data, and as artificial intelligence (AI) puts litigants in a position to more easily generate illustrative aids. Members also raised numerous examples that might or might not constitute illustrative aids. Attorney Mansfield suggested that it might be helpful to begin gathering these examples in a shared document and then categorizing them by the applicable rule or legal principle in advance of further discussion.

Committee members raised the following observations and inquiries—both their own and those gathered from colleagues—as points for further discussion in the event a rule were to be proposed:

- “Demonstrative evidence,” as that term has been used in Vermont, is a broader category than “illustrative aid,” and it is likely that not all evidence which may be classified as “demonstrative” fits within the federal understanding of an “illustrative aid.” Given this context, to the extent the Committee recommends adopting a rule on illustrative aids, it should take care to draft the rule and notes to avoid drawing unnecessary questions about demonstrative evidence that does not constitute an illustrative aid but is a longstanding feature of Vermont practice—e.g., an attorney pacing out a distance in the courtroom and then asking the witness if it is representative of how far the witness was from the individual the witness testified to observing.
- It is important to consider whether adopting a rule would have unanticipated impacts on other areas of litigation. For example, a closing argument may refer only to facts in evidence—raising the question of whether the argument may refer to an illustrative aid, which is not substantive evidence under the federal rule.
- F.R.E. 107 does not define “illustrative aid.” If the Committee were to move forward with a recommendation, it would be important to consider whether a definition should be included in the rule, in the Reporter’s Notes, or whether it would be too limiting to offer any definition.
- With respect to F.R.E. 107(b), are there circumstances where it might be appropriate for a court to send an illustrative aid to the jury room over the objection of a party?
- Is the distinction drawn by F.R.E. 107(d) useful given that the question of when an F.R.E. 1006 (or V.R.E. 1006) summary stops being evidence and starts being illustrative is not a one that can be answered except in the context of a given case?

Overall, members agreed that, if the Committee were to recommend adopting a rule governing illustrative evidence, careful consideration should be given to whether changes should be made to the text of F.R.E. 107 in order to tailor the provision to this jurisdiction, as well as to what type of information should be included in the Reporter’s Notes.

Committee members also shared their thoughts as to whether there was a consistent understanding of the relevant principles among litigants and across courtrooms. Some Committee members indicated that the relevant principles are being applied efficiently and consistently across Vermont courtrooms and expressed doubt as to whether there is a real need for a rule governing illustrative aids. Others described experiencing slightly different approaches among practitioners and judges. Some Committee members noted that, even if the issue is being appropriately handled, having a rule could be helpful to: (1) provide judges with a point of reference in moments where it is necessary to make a ruling on an issue related to an illustrative aid, which could be particularly valuable in enabling self-represented litigants to understand why such an exhibit is not substantive evidence; (2) prevent errors at the end of a trial, when all participants are exhausted but must determine which exhibits can go to the jury room; and (3) help litigants save time in preparing for trial by facilitating predictable results in rulings regarding the use of illustrative aids.

All members agreed to continue the discussion of whether to recommend adopting a rule on illustrative aids at the next Committee meeting. Judge Marsh indicated that she will inquire of the Vermont Bar Association (“VBA”) for any input they may have on the topic.

2. Rule 609, Impeachment With Evidence of Criminal Conviction

The Committee briefly followed up on its January 2026 discussion of amendments the Federal Advisory Committee on Evidence Rules (“Federal Committee”) proposed to F.R.E. 609. That rule governs the circumstances under which a witness’s character for truthfulness may be impeached with evidence of the witness’s prior criminal conviction. The Federal Committee recently discussed a proposal to abrogate F.R.E. 609(a), thus foreclosing the ability to impeach a witness with a felony conviction unless the court can “readily determine that establishing the elements of the crime required proving—or the witness’s admitting—a dishonest act or false statement.” F.R.E. 609(a)(2). The majority of the Federal Committee, however, was opposed to eliminating F.R.E. 609(a). It instead agreed to propose relatively minor changes to F.R.E. 609(a)(1)(B) and (b). The Reporter indicated that these amendments had been published for comment, the comment period closed in February 2026, and the matter had been on the agenda for the Federal Committee’s May 7, 2026 meeting.

Judge Corbett noted that the initial suggestion that this Committee might want to discuss the issue was prompted by the broader changes initially considered by the Federal Committee. He inquired whether the Committee wanted to have this conversation regardless of the Federal Committee’s narrower approach or instead wait to see how the Federal Committee moves forward with any amendments to F.R.E. 609. The Committee members expressed a preference to await further developments at the federal level. The Reporter indicated she will monitor the Federal Committee’s work and keep this Committee apprised of any relevant developments.

3. AI & Potential Related Amendments

The Committee began its continued discussion of AI-related evidentiary issues and any potential responsive amendments to the Vermont Rules of Evidence by surveying recent developments at the federal level. The Reporter shared the following:

As discussed at the Committee’s January 2026 meeting, the Federal Committee has drafted F.R.E. 707 and 901(c) in response to concerns about AI-specific evidentiary issues. The former is intended to address reliability issues where machine-learning output is offered into evidence without an expert witness, and the latter to address “deepfake” allegations by imposing a burden-shifting analysis. The Federal Committee has been holding the F.R.E. 901(c) draft in abeyance pending a demonstration of necessity, but published F.R.E. 707 for comment—though it expressly noted that publication was intended to elicit comment but did not necessarily reflect support for ultimate adoption of the rule. The F.R.E. 707 comment period closed in February 2026. The Federal Committee Reporter created a memorandum summarizing the comments and surveying recent case law and publications relevant to both draft rules. The Federal Committee planned to discuss the issue at its May 7 meeting, so we are likely to have more insight into their next steps soon. The Reporter will monitor for developments.

A recent Southern District of New York decision addressing claims of privilege raised in connection with the output of a generative AI platform has garnered broad discussion across jurisdictions. See U.S. v. Heppner, No. 25 Cr. 503 (JSR), 2026 WL 436479 (S.D.N.Y. Feb. 17, 2026). The defendant in that case—without any direction from his attorney—used generative AI to prepare documents outlining a strategy for his defense. The court concluded that neither attorney-client privilege nor the work-product doctrine applied.

Following these updates, several Committee members discussed Heppner. Topics included whether or not Heppner had clear limiting principles and the likelihood that questions arising from the application of privilege rules to AI output would soon be further clarified in additional cases. Judge Corbett queried whether a litigant using an AI platform to search for an attorney could lead to privilege issues similar to those the Committee recently considered in connection with the lawyer-referral program.

With respect to AI issues broadly, the Judge Marsh and Attorney Miller noted that the VBA is continuing to familiarize itself with the federal developments and the work of the Vermont AI taskforce.

Several Committee members noted that given the pace at which AI technology is developing and Vermont's small size, it makes sense to take a wait-and-see approach. The Committee agreed to let the AI issues percolate and discuss again at the next meeting.

IV. New Matters

Judge Corbett and the Reporter indicated that no new public comments had been received since the Committee's last meeting.

The Reporter noted that the Committee's annual report is due on October 6, 2026. The Reporter will prepare a draft.

No additional topics were nominated for discussion at the next Committee meeting. Judge Corbett indicated that possible V.R.E. 107 and AI issues would be placed on the agenda. He requested that the Committee members contact him or the Reporter if any additional matters come up prior to that meeting so that they can be included on the agenda.

V. Closing

The next Committee meeting was scheduled for Friday, September 11, 2026, at 2:00 p.m.

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

Respectfully submitted,

/s/ Aliza Harrigan
Aliza Harrigan, Reporter