

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
FEBRUARY 10, 2023 MINUTES

The Evidence Rules Committee held a virtual meeting on February 10, 2023, at 2:00 PM via Microsoft Teams.

Present: Hon. John Pacht, Dickson Corbett, Mimi Brill, Ben Chater, Michelle Donnelly, Liz Miller, Marshall Pahl

Reporter: Jennifer Rushlow

Minutes from the last committee meeting approved.

OLD BUSINESS

Rule 615

The Federal Rules of Evidence Committee has proposed an amendment to include an additional provision allowing the trial judge to issue orders not only to exclude witnesses from the courtroom, but also to prohibit sequestered witnesses from accessing trial testimony. We are waiting to see that the FRE Committee does. The committee discussed the scope of the problem to be addressed. Several members of the committee identified that these issues were particularly problematic during the pandemic and virtual proceedings. Members of the committee noted that this may be an issue that is more about enforcement than authority, but members also noted that having clear language in the rule will help focus attention on the problem. Members of the committee will follow up with the Committee on Remote Proceedings to learn more regarding this issue.

Restyling

Karen McAndrew prepared a draft restyling of the rules to eliminate the use of gendered pronouns and assumptions. That draft was circulated again prior to this meeting. The most changes occurred sections on privileges and witnesses. There were no proposed changes to Karen's work at this committee's last meeting. Marshall Pahl made a motion to approve the proposed edits to the Rules of Evidence and transmit them to the Vermont Supreme Court. The motion was seconded by Mimi Brill. The motion passed. Jenny will work on the reporter's notes with Dickson.

Effective date of proposed rule amendments

New and amended rules are taking effect periodically throughout the course of the year, and practitioners are expressing difficulty keeping up with rule changes. The question has been raised whether the effective dates of new or amended rules should be just twice a year: January 1st and July 1st. The committee expressed no objections.

Rule 807

The committee promulgated amendments to Rule 807. One public comment made on the draft rules was not addressed in the committee's conversation. It was a recommendation regarding disability rights, that the offense of sexual abuse of a vulnerable adult should be added to the list

of eligible offenses for consideration under Rule 807. The committee discussed revisiting this issue at a future meeting.

Rule 804a

A public comment raised the question of whether Rule 804a should be amended to reflect the use of the rule in the Family Division. The rule refers to various criminal and civil proceedings, but not to family proceedings. As a result, family courts have interpreted the rule as not applying to family proceedings. The commenter identified that the rule was adopted before the Family Division was created. Family matters were considered civil proceedings at that time, and therefore within the scope of the rule. The committee will invite the commenter to present the issue and proposed language at a future meeting.

The next meeting of the committee will take place on June 12, 2023.

