

**VERMONT SUPREME COURT**  
**ADVISORY COMMITTEE ON RULES OF EVIDENCE**  
**OCTOBER 28, 2022 MINUTES**

The Evidence Rules Committee held a virtual meeting on October 28, 2022, at 2:00 PM via Microsoft Teams.

Present: Mimi Brill, Claudine Safar, Dickson Corbett, Hon. Harold Eaton, Karen McAndrew, Scot Kline, Liz Miller, Pam Marsh.

Not on: Hon. John Pacht, John J. Boylan III

**Minutes from the last committee meeting approved.**

**NEW BUSINESS**

**Committee Membership:**

Per the Vermont Supreme Court, the committee is charged with filling four spots to represent the following practice areas: probate; mental health; family domestic; juvenile. Dickson advertised committee membership openings and solicited applicants, including through various professional organizations. There are 13 prospective members. A spreadsheet with the list of candidates who expressed interest in joining, along with their letters of interest, was shared over email with committee members. The committee is asked to the Court three names of potential appointees for each position and to identify our top recommendation. Candidates were discussed. The committee agreed to send a letter to the Court with six names for the four open spots identifying top three choices and three additional recommendations.

**OLD BUSINESS**

**Lawyer Referral Privilege:**

Pam has been working on the lawyer referral privilege and made contact with Bob Paolini. Bob would like to come in and address the committee and hopefully propose some language. The focus of our next meeting will be to hear from Bob and Pam to discuss that privilege.

**Pronoun references in VRE:**

Karen is working on proposed revisions to the Vermont Rules of Evidence to eliminate pronouns and gender references and assumptions. Dickson circulated a draft over email. Existing reporter's notes are historical documents and cannot be revised. New reporter's notes should be added to say that changes were made to eliminate any reference to gender. The committee intends to vote on the proposed rule at the meeting. The proposed rule would then be sent to the Vermont Supreme Court along with reporter's notes. The Federal Rules of Evidence were revised to this effect in 2011, and there may be helpful language in the Advisory Committee notes on these changes.

**Rule 404**

Deferred.

**Rule 801**

Deferred.

**Rule 615**

Judge Pacht informed Dickson that no other oversight committees are currently addressing issues of sequestration in our new remote evidentiary environment. Scott Griffith, who is involved with remote proceedings, informed Dickson that the issue of sequestration is not being addressed elsewhere for remote evidentiary hearings. Dickson and Jenny will propose language for discussion at the next meeting.

**Rule 807:**

The committee met on November 15, 2019, and voted on the proposed rule at that time. The proposed rule was sent to the Supreme Court. Public comment was invited by February 10, 2020. There was then a delay in progress due to the pandemic. The committee received a comment from Zachary Hozid that led to our making noncontroversial edits. The committee is comfortable that it has appropriately considered the comments received. Dickson proposed a motion to vote to approve the amended Rule 807 having been proposed, publicly noticed, and comments received and considered, and send it to the Supreme Court for further process. Mimi Brill seconded the motion. The committee voted unanimously to approve the proposed amendments to Rule 807. Dickson and Jenny will send a transmittal to the Supreme Court.

**Rule 804:**

Potential issue for discussion at a future meeting is whether Rule 804 should be revised to reflect the existence of the Family Division.

The next meeting of the committee will take place on February 10, 2023.