

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
NOVEMBER 9, 2018 MINUTES**

The Evidence Rules Committee held a meeting at 2 p.m. on November 9, 2018, at the Supreme Court.

The meeting was called to order at 2:05. Present: Elizabeth Miller, Chair; Hon. Beth Robinson; Mimi Brill; John Boylan; Clara Giménez; Kenneth Kreiling; Sandy Levine; Karen McAndrew; Pam Marsh; Claudine Safar. Invited attendee: Hon. John Dooley. There were no members of the public in attendance.

1. Approval of minutes of July 13, 2018 meeting. The minutes were approved upon correction of an error in the attendance record.
2. Discussion of 12 V.S.A. §1913 (blockchain enabling).

Justice Dooley provided the Committee with an overview of the development of the statute. He explained his participation in providing input to the legislature regarding the authentication and presumption provisions. Justice Dooley noted that, from the earliest drafts, it appeared that the drafter intended something akin to an enhanced version of 803(6) and 902, perhaps offering greater protections than those rules provide. Justice Dooley agreed with this Committee that the enacted statute has some inconsistencies among subsections (2) and (3) that could be resolved. He also observed that some lack of clarity in the statute's language is probably due to blockchain being such a novel technology at the time the statute was drafted. The statute tries to anticipate possible legal issues with blockchain applications that were -and are- still being developed.

The Committee considered possible courses of action and resolved to reach out to the Legislature to inquire whether any redrafting or revision of the statute is currently on their agenda. The Committee unanimously voted to authorize the Reporter to prepare a proposed redraft if the Legislature expresses an interest in revising the statute.

3. Discussion and vote on proposed amendment to Rule 804A to eliminate offensive language. The Committee reviewed a proposed amendment to Rule 804A intended to make the language of the statute consistent with the definitions set forth in 1 V.S.A. §§146-148. Ms. Brill expressed the concern that the proposed amendment may in fact expand the protections of 804A to persons not covered by the current Rule. Ms. Marsh noted that advance notice was needed so that Bar members could submit their input. The Committee resolved to table the issue until next meeting. The Chair and Reporter will contact individuals and organizations who may be interested in providing input on this issue.

4. The Committee set the dates for future meetings. It was agreed to reserve a meeting for discussion of 804 A, and a subsequent meeting for the discussion of several privilege proposals (lawyers assistance programs, lawyer's referral privilege, and crisis worker privilege).
5. Adjournment. Meeting was adjourned at 3:15.