

VERMONT SUPREME COURT
Advisory Committee on the Rules of Evidence
2018 Annual Report
December 29, 2018

The Advisory Committee on the Rules of Evidence submits this report to the Vermont Supreme Court pursuant to Administrative Order No. 23 §4. This report covers calendar year 2018. During this period, the committee convened on March 30th, July 13th, and November 9th to consider amendments and other matters pertaining to the Vermont Rules of Evidence.

I. PROMULGATED AND RECOMMENDED AMENDMENTS:

During this period, the Committee recommended an amendment to Rule 902, adding subsection (13), which makes our self-authentication rule consistent with 12 VSA §1913, a statute pertaining to the admissibility of evidence contained in blockchain records. Rule 902(13) mirrors the language and conditions set forth in §1913(b)(1), a section declaring that blockchain records are self-authenticating.

The Committee received no comment during the comment period. The Legislative Committee on Judicial Rules reviewed the proposed amendments on October 19, 2018, and expressed no objection. Therefore, the Committee recommended that the amendments be promulgated.

II. MATTERS REMAINING IN THE COMMITTEE'S AGENDA

- a. **Consideration of proposed amendment to Rule 804A.** The Committee is considering a proposed amendment to 804 A. The purpose of the amendment is to make the language of this rule consistent with the legislative efforts to use uniform and respectful language to describe individuals with disabilities, as codified in 1 V.S.A. 146-148. There are some concerns, however, that the amendment may have the effect of expanding the protections of the rule to individuals not covered by the original rule. Thus, the Committee tabled the issue until concerned parties could be heard. A meeting and hearing on this issue is scheduled for January 2019.
- b. **Consideration of proposed privilege for communications with lawyer referral services.** The Committee keeps in the agenda for 2019 the consideration of a proposed privilege for communications with non-attorneys employed by lawyer referral services. The request for the privilege arises out of concern that individuals making the initial intake through the referral service are not lawyers and may not be considered “a

representative of the lawyer” as defined in 502. Thus, communications made during that initial intake may be unprotected. The privilege expansion was recommended for consideration by an American Bar Association resolution. The Committee intends to schedule meetings in 2019 to hear testimony on this matter.

- c. **Consideration of privilege for Vermont Lawyers Assistant Program participants.** The Committee is aware of the activity of the Vermont’s Commission of Attorney Well-Being to strengthen the Vermont Lawyers Assistant Program. The Committee’s agenda for 2019 includes the consideration of a specific privilege to protect communications of participants in the Lawyers Assistant Program, if the Commission so recommends.
- d. **Victim-Crisis Worker Privilege.** The Committee will consider whether the rules should be amended to include this privilege, which currently exists by virtue of a statute. 12 V.S.A. § 1614.

III. COMMITTEE MEMBERSHIP

There were several membership changes during 2018. Judge John Pacht joined to Committee to fill the vacancy left by Judge DiMauro’s departure. Attorneys Mimi Brill and Claudine Safar were appointed to replace Jerome O’Neill and Bobby Sand, who had declined reappointment. Judge William Cohen stepped down at the end of 2018. A replacement has not been appointed at the time of this Report was prepared. The Committee thanks Judge DiMauro, Judge Cohen, Jerome O’Neill, and Bobby Sand for their dedicated service.

The Committee and Reporter wish to thank all the members of the Vermont bench and bar, the members of the Legislative Committee on Judicial Rules, and others who have participated in the rule-making process through their thoughtful suggestions and comments. In particular, thanks are due to Hon. Beth Robinson for her assistance and support as Supreme Court liaison, and to Court Administrator Patricia Gabel, staff attorney Emily Wetherell, and Monica Bombard, Deb Laferriere and Elizabeth Finn of the Court Administrator’s staff for their continued and essential support.

Respectfully submitted,

Elizabeth Miller, Committee Chair
Clara Gimenez, Committee Reporter