

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
FEBRUARY 24, 2017
MINUTES**

The Evidence Rules Committee met on Friday, February, 2017, in the Sunshine Room, Vermont Supreme Court, Montpelier. Meeting was called to order at 12:15.

Present: Elizabeth Miller, Chair; Hon. Beth Robinson; Hon. Bill Cohen; Hon. Theresa DiMauro; John Boylan; Clara Gimenez; Sandy Levine; Pamela Marsh; Karen McAndrew; Robert Sand.

Speakers and guests present: Teri Corsones, VBA. There were no members of the public in attendance.

- 1. Review and approval of 5/15/2014 Meeting minutes.** Minutes were approved upon correction of typographical error.
- 2. Request of adoption of privilege for communications made to the VBA Lawyer Referral Service**

Terri Corsones appeared on behalf of the VBA and requested adoption of a proposed new rule providing privilege for communications made to the VBA Lawyer Referral Service. Ms. Corsones stated that a privilege is needed because 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. Although the VBA service has not encountered this problem, similar organizations in other jurisdictions have faced subpoenas from opposing parties seeking out this information.

The Committee discussed the proposed language and whether an amendment to current VRE 502 is a more appropriate route than creating the proposed privilege. A general discussion followed as

to whether it would be appropriate to extend the privilege to other organizations, including online services. The Committee resolved to take the issue under consideration, and that the Reporter should prepare additional research and a draft of the proposed amendment at the next meeting.

- 3. Update on legislative action regarding admissibility of evidence of blockchain transactions (Act 157).** In light of the enactment of Act 157, which contains provisions pertaining to the authentication of blockchain transactions and their admissibility as business records, the Committee resolved to consider amending VRE 903 and 803(6). Reporter will draft proposed language and report to the committee at next meeting.
- 4. Update on legislative reconsideration of expansion of Rule 807.** (H.523). The Reporter updated the Committee on the testimony given before the House Judiciary Committee on a proposed expansion of the Rule. The Reporter noted that the proposal did not advance.
- 5. Update on rules being considered by the Special Committee on Video Appearance and Courtroom Electronics.** John Boylan reported to the Committee regarding proposed V.R.C.P. 43.1, and its possible impact on the interpretation of “availability” for purposes of Rule 804. Both the Special Committee on Video Appearance and the Advisory Committee on the Rules of Civil Procedure requested that the Evidence Rules Committee weighed in the matter. After discussion, it was determined that additional research was needed. The issue was tabled and postponed for a teleconference to be scheduled before the next meeting of the Advisory Committee on the Rules of Civil Procedure meeting.
- 6. Other business.** The Chair noted that she had received a communication from a private citizen requesting that the Committee consider the elimination of the present sense impression and excited utterance hearsay exceptions -VRE 803

(1) and (2). The information provided will be shared and whether this should be put in the agenda will be decided at a later time.

7. Dates of next meetings. Chair will propose next meeting dates via email.

8. Adjournment. Meeting was adjourned at 1:36.