

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
MARCH 27, 2017 TELECONFERENCE
MINUTES**

The conference was called to order at 9:05 a.m.

Present: Elizabeth Miller, Chair; Hon. Bill Cohen; John Boylan; Clara Gimenez; Pamela Marsh; Karen McAndrew; Robert Sand.

There were no members of the public in attendance.

Discussion regarding the impact of VRCP 43.1 on the determination of witness' "availability" for purposes of VRE 804.

The Committee discussed the effect of proposed rule VRCP 43.1 on VRE 804. The Special Committee on Video Appearance and the Advisory Committee on the Rules of Civil Procedure submitted competing interpretations and proposed language to clarify whether a witness who appears by video is "available" for purposes of V.R.E.804(a)(5).

The Committee unanimously rejected adopting either version of the sentence presented. Instead, the Committee voted unanimously to recommend that a Reporters Note be added to explain that Rule 43.1 is meant to provide an accommodation or option to parties to utilize technological means to secure live testimony at trial but the court must have discretion in any given case regarding the conduct of trial; if the Rule 43.1 procedure actually is utilized successfully to allow a witness to testify remotely, that witness would ordinarily be considered available. The note should also explain that availability of video appearances should not by itself automatically constitute "reasonable means" under 804 for purposes of analyzing whether any particular witness is or is not available. The Reporter will draft the Note and circulate to the committee members for feedback.

The teleconference was adjourned at 9:55.