

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
MARCH 30, 2018
MINUTES**

The Evidence Rules Committee held a meeting at 1:00 p.m., on March 30, 2018.

The meeting was called to order at 1:10. Present: Elizabeth Miller, Chair; Hon. Beth Robinson; Hon. John Pacht; John Boylan (by phone); Mimi Brill; Clara Gimenez; Sandy Levine; Pam Marsh; Claudine Safar. Prof. Oliver Goodenough was present as an invited speaker. There were no members of the public in attendance.

1. Approval of Minutes. The minutes from the September 19, 2017 meeting were approved unanimously.
2. Consideration of possible amendments to authentication and hearsay rules to reflect legislative action dealing with admissibility of evidence of blockchain transactions (Act 157).

Prof. Goodenough provided background on the uses of blockchain and its advantages in terms of safety and availability of records. Goodenough commented briefly on the legislative history of the statute: the purpose of the statute was to promote Vermont as good choice for creation and operation of blockchain related businesses and create new lines of economic activity in the state. In that context, the modification of the authentication and hearsay rules to include blockchain specific provisions was intended to minimize the risk of litigation disputes may be caused by unfamiliarity with the trustworthiness of blockchain as a recordation method. In Prof. Goodenough's opinion, there was no intent to create a higher level of trustworthiness for the content of these records than for other business records. Rather, the intent was to ensure admissibility of the fact that the records were made.

The Committee agreed that some amendment to the authentication rule was warranted. Several members noted the apparent inconsistency of sections (b) and (c) of the statute and concluded that some clarifying language was needed to ensure there was no misinterpretation or misapplication of the statute to expand the hearsay business record exception. On motion duly made and seconded, the Committee voted that Rule 902 shall be amended, and that the accompanying Reporter's Note shall include a reference clarifying the impact of the statute on our business record exception.

The Committee also considered, as a next step, reaching out to the Legislature and suggest some clarifying language regarding the inconsistency between the narrow intent of the authentication and hearsay exceptions and the broad language of the presumption set forth in the statute.

3. Legislative update on proposed rules regarding child testimony. Clara Giménez provided

a brief update and ongoing legislative activity regarding possible amendments to the hearsay rule to facilitate the testimony of children. No action was required at this time.

4. Other business. The Committee was reminded of pending business regarding proposed amendments of privilege rules (lawyers assistance programs, sexual assault/domestic violence crisis workers). It was agreed that Mike Kennedy will be invited to talk at a later meeting this year to discuss the issue further.
5. Dates of next meetings: The Committee will meet on July 13 at 3:00. Place to be determined.
6. Meeting was adjourned at 2:35