

**VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE
Minutes of Meeting
September 19, 2017**

The meeting was called to order at 3:00 p.m., on September 19, 2017, in the “Sunshine Room”, Vermont Supreme Court, Montpelier. Members Present: Elizabeth Miller, Chair; John Boylan, Vice Chair; Hon. William Cohen; Sandy Levine, Karen McAndrew, Bobby Sand. Also present Hon. Beth Robinson, Supreme Court liaison, and Clara Gimenez, Reporter.

1. Public comment: no member of the public was in attendance.
2. **Minutes:** The Committee unanimously approved the minutes pertaining to the February 24, 2017 meeting and the March 27, 2017 teleconference.
3. **Update on V.R.C.P. 43.1:** John Boylan provided an update on the status of VRCP 43.1, as we continue to monitor its possible impact on Evidence Rule 804. For now, the rule does not contain the reference to unavailability for purposes of Rule 804 that had created the need for input from the Evidence Rules Committee. The proposed rule is still being considered by the Civil Rules Committee.
4. **Consideration of proposed privilege for communications with lawyer referral services.** The Committee reviewed the Reporter’s memorandum and considered a draft rule of the proposed privilege. There was no agreement as to whether the expansion of the attorney client privilege, or a separate privilege, was warranted. There were also questions regarding whether it could be possible limit the scope of the privilege to organizations that provide a public service but exclude commercial operations. Some members would like to invite a Lawyers Referral Service staff member, and perhaps other services like VTAJ, to come before the committee.
5. **Consideration of possible amendments to authentication and hearsay rules to reflect legislative action dealing with admissibility of evidence of blockchain transactions (Act 157)** The Committee reviewed the Reporter’s memorandum and considered proposed amendments to 803(6) and 902. It was agreed that more information was needed regarding the operation of blockchain. The Committee will invite Prof. Oliver Goodenough, who drafted the proposed legislation, to speak at the next meeting. The Committee would also explore the possibility of adding a reporter’s note referencing the statute, instead of amending the rules.
6. Other business. Clara Giménez brought to the Committee’s attention that there is a statutory “Crisis worker privilege” that is not reflected in or referred to in the Evidence Rules. The issue will be added to the agenda once the Committee is ready to reexamine the proposed privilege for communications with a lawyer referral service.
7. The meeting was adjourned at 4:45.