

VERMONT SUPREME COURT
ADVISORY COMMITTEE ON RULES OF EVIDENCE

May 12, 2023 MINUTES

The Advisory Committee on the Rules of Evidence held a virtual meeting on May 12, 2023, at 2:00 PM via Microsoft Teams.

Present: Hon. Harold Eaton, Hon. John Pacht, Dickson Corbett, John Boylan, Mimi Brill, Ben Chater, Michelle Donnelly, Cristina Mansfield, Karen McAndrew, Pamela Marsh, Marshall Pahl

Reporter: Jennifer Rushlow

Visitors: Robert Paolini, Vermont Bar Association.

Minutes from the last committee meeting approved.

COMMITTEE MEMBERSHIP

John Boylan will step down at the end of June. The committee is grateful for his longtime contributions. Dickson Corbett has been appointed a judge of the Vermont Superior Court, and his role on the committee going forward is to be determined. Accordingly, the committee will need at least one, and possibly two, new members in the areas of civil and criminal law. The committee will issue a letter soliciting applications from a broad range of subject matter areas, as well as consider candidates from the last round of applicants.

OLD BUSINESS

Lawyer Referral Privilege

The committee heard from Robert Paolini, Executive Director of the Vermont Bar Association (VBA). Mr. Paolini also submitted written materials to Dickson Corbett and Pamela Marsh, which were distributed to committee members after the meeting. At the meeting, Mr. Paolini described the VBA's lawyer referral service. The service receives about 50 calls per day from individuals seeking counsel in various areas of law, and the service then provides referrals. The VBA has assembled a group of about 150 lawyers in the state that are willing to take referrals from the service. The service is staffed by two non-attorneys that field phone calls and make referrals based on what they learn in the conversation with the caller.

Mr. Paolini offered a summary of his research on the history of the lawyer referral privilege, which does not exist federally but has been adopted in a handful of states. The privilege stemmed from a case where a party to an action subpoenaed records or tried to call a non-attorney employee operating a lawyer referral service as a witness. This led the ABA to call for states to extend the lawyer-client privilege to lawyer referral services in a 2016 resolution. Since then, a few states have adopted the privilege. Mr. Paolini pointed to examples from California and Utah. There do not appear to be many examples of actual discovery requests being made for lawyer referral staff.

Advisory committee members expressed interest in considering potential language for rule revisions to this effect. A subcommittee will meet to consider these issues and report back to the full advisory committee.

Restyling

A public commenter suggested that Rule 804a be amended to specifically refer to the Family Division. However, this issue was recently addressed in a Supreme Court decision. The advisory committee may take it up with future technical amendments.

A statutory citation in Westlaw's Rule 404(a)(2) is incorrect. Dickson Corbett will reach out to Westlaw to request the correction.

A public commenter noted that Rule 503(D)(7) includes an old reference to juvenile proceedings before the 2008 amendment. The advisory committee may take it up with future technical amendments.

Rule 615.

There is a proposed amendment to the Federal Rules of Evidence clarifying that sequestration orders can extend beyond the courtroom. A subcommittee will meet to consider language about sequestration in remote evidentiary hearings and report back to the full advisory committee.

The next meeting of the committee will take place on September 15, 2023, at 2:00 PM.