

CODE OF EVIDENCE OVERSIGHT COMMITTEE MEETING

September 24, 2009

2:00 p.m.

Attorney Conference Room
231 Capitol Avenue, Hartford, Conn.

MINUTES

In attendance:

Hon. Thomas Bishop, Chair
Atty. Robert B. Adelman
Hon. Thomas J. Corradino
Atty. Susann E. Gill
Hon. John F. Kavanewsky, Jr.

Atty. Joseph Rubin
Hon. Michael R. Sheldon
Atty. Jack J. Steigelfest
Atty. Eric W. Weichman
Prof. Colin Tait

Also in attendance:

Atty. Daniel B. Horwitch

1. Minutes of Meeting – The minutes of the November 5, 2008 were approved.
2. Section 8 -10. “Hearsay Exception: Tender Years”
 - Inconsistency between section 8-10 and C.G.S. § 54-86*l* as amended by Public Act 09-63.
 - Proposal to amend 8-10 to conform to C.G.S. § 54-86*l*
 - The Committee voted to recommend adopting the language of C.G.S. § 54-86*l* as the text of § 8-10 of the Code.
 - Proposed revision to Commentary.
 - The Committee voted to recommend amending the Commentary to reflect that the adoption of the language of C.G.S. § 54-86*l* was intended to remove any conflict between the prior version of 8-10 and the statute. Noting that the language of the statute did not contain certain notice provisions in the current version of 8-10, the Committee decided to recommend that the Commentary reflect that the absence of the notice provisions should not be considered as limitation on the court’s ability to order them.

3. Publication of updated Connecticut Code of Evidence to incorporate revisions since publication of 2008 edition.
 - The Committee voted to request that the Code be included in the annual publication of the Connecticut Practice Book to ensure that amendments are published on a regular basis.
4. *State v. DeJesus*, 288 Conn. 418 (2008)
 - Proposed revision to Commentary to Section 1-1 regarding impact of *DeJesus*
 - The Committee voted to recommend amending the Commentary by adding the following as a new first sentence:
 - “The Connecticut Code of Evidence was adopted by the Judges of the Superior Court. In *State v. DeJesus*, 288 Conn. 418, 953 A.2d 45 (2008), the Connecticut Supreme Court held that Connecticut’s appellate courts are not bound by a code adopted by the Judges of the Superior Court.”
 - Proposed notice / caveat for beginning of Code
 - The Committee concluded that a revised Commentary to section 1-1 was sufficient to convey the impact of *DeJesus* on the Code and that a separate notice or caveat at the beginning of the Code was not necessary.
5. Propensity – Section 4-5
 - Proposed amendment
 - The Committee discussed a proposed revision to section 4-5 that would reflect the holdings of *State v. DeJesus*, 288 Conn. 418 (2008); *State v. Snelgrove*, 288 Conn. 742 (2008); and *State v. Johnson*, 289 Conn. 437 (2008). Attorney Horwitch was asked to consolidate the consensus of the Committee into a revised draft and circulate it to the committee members for their review. No conclusion was reached regarding proposals to change the headings of the subsections. It was agreed that Judge Bishop, Professor Tait and Attorney Horwitch would work on the subsection headings and circulate their recommendations to the committee members for their consideration. Professor Tait and Attorney Horwitch were also asked to prepare a draft, proposed revision of the Commentary and circulate it to the committee members for their comments.

6. Next meeting.

The Committee agreed that its next meeting should be scheduled for the spring of 2010 at a date to be determined. The Committee decided that the agenda for its next meeting should include the following items:

- Consideration of asking the Supreme Court to adopt the Code
- Reconsideration of proposing a revision of section 8-3 (1)
- Consideration of revising the Commentary to section 6-11 to note the holding of the Appellate Court in *State v. Samuels*, 273 Conn. 541, 556 (2005).
- Review section 7-2 in light of the post-*State v. Porter*, 241 Conn. 57, cert. denied, 523 U.S. 1058 (1997), cases of *State v. Reid*, 254 Conn. 540 (2000) and *State v. Vumback*, 68 Conn. App. 313 (2002).