

CODE OF EVIDENCE OVERSIGHT COMMITTEE MEETING

November 5, 2008

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. Joseph G. Bruckmann
Atty. Susann E. Gill
Hon. John F. Kavanewsky, Jr.

Hon. Joseph Q. Koletsky
Atty. Joseph Rubin
Hon. Michael R. Sheldon
Atty. Jack J. Steigelfest
Prof. Colin Tait

Also in attendance:

Atty. Daniel B. Horwitch

The Chair began the meeting by noting the departure of his predecessor and noting his appreciation for the many years of service provided by Justice Joette Katz in guiding the Committee.

1. Minutes of Meeting – With the exception of the misspelling of the name of Committee member Joseph G. Bruckmann, the minutes of the May 14, 2007 were approved.
2. *State v. DeJesus*, 288 Conn. 418 (2008)

- a. What is the role of the Committee in light of the decision?

The Committee concluded that it continues to have a viable function, albeit a somewhat different one than before the Supreme Court's holding that the

adoption of the code [of evidence] by the judges of the Superior Court codifying the common-law rules of evidence...did not divest ... [the Supreme Court] of its inherent common-law adjudicative authority to develop and change the rules of evidence on a case-by-case basis.

288 Conn. at 439.

The Committee discussed possible functions including:

- Updating the code when court decisions render provisions no longer completely accurate.
- Updating the code to address situations and provide more specific guidance where the Court only holds that a particular interpretation of the code did not constitute error.
- Proposing amendments in areas not addressed by Connecticut case law (in part, noting the possibility that *DeJesus*' reference to common law is not limited to Connecticut decisional law) with the knowledge that (a) the judges of the Superior Court may not adopt them and (b) they may eventually be overruled by the Court.
 - In this regard, the Committee discussed its proposed amendment to §8-3(1) concerning agency. It was noted that the proposal had been tabled by the Rules Committee of the Superior Court. The Chair will discuss the matter with the Chair of the Rules Committee and report back to the Evidence Committee.
- Updating Commentary sections of the Code.

b. What action should be taken, if any, with respect to Section 4-5, "Evidence of Other Crimes, Wrongs or Acts to Prove Character; Admissible for Other Purposes; Specific Instances of Conduct"?

The Committee agreed that §4-5 should be amended to reflect the holding of *DeJesus*. The proposed amendment circulated before the meeting was discussed, together with the implications of the *State v. Snelgove*, 288 Conn. 742, 760-761 (2008); *State v. Johnson*, Conn. (2008). Counsel was directed to amend the proposed amendments to both the section and its Commentary, consistent with the discussion, and circulate them to the Committee.

3. Section 8 -10. "Hearsay Exception: Tender Years"
 - a. Inconsistency between section 8-10 and C.G.S. § 54-86l

The Chair reported that it was his understanding that the legislature was considering amending the statute to be consistent with §8-10 of the Code. The Chair will discuss this with members of the Judiciary Committee. Attorney Rubin noted that his office was going to propose an amendment to the statute to make it clear that the hearsay exception applies to termination of parental rights cases. Judge Sheldon noted that the Rules Committee was meeting with the Judiciary Committee on November 20 and that he would raise the issue of the concerns of Attorney General's office at that time.

4. Section 6-11. Prior Consistent Statements of Witnesses; Constancy of Accusation by Sexual Assault Victim

- a. Proposal: If defendant admits/stipulates that victim reported assault, do not need witnesses to that effect.

In light of the holding in *DeJesus*, and the fact that the language of the section is consistent with the holding in *State v. Troupe*, 237 Conn. 284, 294(1996), it was decided that, with one exception, this item should be removed from the agenda.

The Committee noted that it would be appropriate to consider amending the Commentary to the section to note the holding of the Appellate Court in *State v. Samuels*, 75 Conn. App. 671, 680 (2003).

5. Other Business

- a. Section 7-2, "Testimony By Experts"

It was noted that neither §7-2 nor its commentary has been amended to reflect 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). It was agreed to place the topic on the agenda of the Committee's next meeting.

6. Next meeting.

The Committee agreed that its next meeting should be scheduled for late January 2009 on a date to be determined.