

Minutes of the Meeting
Rules Committee
June 11, 2008

On Wednesday, June 11, 2008 the Rules Committee met in the Attorneys' Conference Room from 9:00 a.m. to 9:40 a.m. This was a continuation of the June 2, 2008 meeting.

Members in attendance were:

HON. PETER T. ZARELLA, CHAIR
HON. THOMAS J. CORRADINO
HON. RICHARD W. DYER
HON. ROLAND D. FASANO
HON. C. IAN MCLACHLAN
HON. PATTY JENKINS PITTMAN
HON. MICHAEL R. SHELDON

Judges Pinkus and Robinson were not in attendance at this meeting.

Also in attendance was Carl E. Testo, Counsel to the Rules Committee.

Agenda

1. When the Rules Committee met on June 2, 2008, it discussed proposed new Section 8-10 of the Code of Evidence and Justice Zarella pointed out that there is a public act that is at variance with the proposal. At that time the Committee tabled the proposal until it could be discussed with the Chief Justice, the Chairmen of the Judiciary Committee, and the Chair of the Code of Evidence Committee.

At this meeting Justice Zarella reported that Justice Joette Katz discussed this matter with representatives of the Judiciary Committee who advised her that if the Superior Court judges adopted new Section 8-10 of the Code of Evidence, the legislature would amend the statute on this topic next session so that it is consistent with the rule.

The Rules Committee thereupon voted unanimously to submit proposed new Section 8-10 of the Code of Evidence to the judges for adoption as set forth in Appendix A attached hereto.

2. The Committee discussed the objections to the proposed revisions to Section 13-4 that were raised by Attorney Joseph R. Mirrione on behalf of the Connecticut Trial Lawyers Association (CTLA).

Justice Zarella noted that the Civil Task Force, which submitted the proposed revisions to Section 13-4 to the Rules Committee, included representatives from CTLA. Justice Zarella will forward a letter to Attorney Mirrione advising him of the history of the proposed revisions to Section 13-4 and will include that history in his remarks to the judges at the Annual Meeting.

3. At a prior meeting, the Rules Committee decided that if the proposed revisions to the juvenile rules are adopted, they would ask the Superior Court judges to make the changes effective August 1, 2008. Judge Christine Keller subsequently requested that the effective date of the revisions be January 1, 2009 so that the Branch has time to implement the changes before they become effective. The Rules Committee thereupon agreed to request the judges to make the revisions effective on January 1, 2009.

The Rules Committee approved a request by Sandy Klebanoff of the Connecticut Bar Foundation that the Committee ask the judges to make the proposed revisions to Rule 1.15 of the Rules of Professional Conduct effective on August 1, 2008 to eliminate the confusion that currently exists among many lawyers with regard to this rule.

The Rules Committee approved a request by Joseph D'Alesio, Executive Director of Superior Court Operations, that the Committee ask the judges to make the proposed revisions to Section 1-10 effective August 1, 2008, because screening the public for camera phones and taking the phones from them as they enter courthouses is extremely costly and time consuming.

4. The Committee noted comments, which were received subsequent to the June 2, 2008 public hearing, concerning the proposed revisions to the Practice Book and Code of Evidence that were the subject of that hearing.

Respectfully submitted,



Carl E. Testo
Counsel to the Rules Committee

CET:pt
Attachment

**PROPOSED AMENDMENTS TO THE
CODE OF EVIDENCE**

(NEW) Sec. 8-10. Hearsay Exception: Tender Years

(a) A statement made by a child, twelve years of age or under at the time of the statement, concerning any alleged act of sexual assault or other sexual misconduct of which the child is the alleged victim, or any alleged act of physical abuse committed against the child by its parent, guardian or any other person then exercising comparable authority over the child at the time of the act, is admissible in evidence in criminal and juvenile proceedings if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the circumstances of the statement, including its timing and content, provide particularized guarantees of its trustworthiness;

(2) The statement was not made in preparation for a legal proceeding; and

(3) The child either:

(A) Testifies and is subject to cross-examination in the proceeding, either by appearing at the proceeding in person or by video telecommunication or by submitting to a recorded video deposition for that purpose; or

(B) Is unavailable as a witness, provided that:

(i) There is independent corroborative evidence of the alleged act. Independent corroboration does not include hearsay admitted pursuant to this section; and

(ii) The statement was made prior to the defendant's arrest or institution of juvenile proceedings in connection with the act described in the statement.

(b) A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party his or her intention to offer the statement, the content of the statement, the approximate time, date, and location of the statement, the person to whom the statement was made, and the circumstances surrounding the statement that indicate its trustworthiness. If the statement is in writing, the proponent must provide the adverse party a copy of the writing; if the statement is otherwise recorded by audiotape, videotape, or some other equally reliable medium, the proponent must provide the adverse party a copy in the

medium in the possession of the proponent in which the statement will be proffered. Except for good cause shown, notice and a copy must be given sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare to meet the statement.

(c) This section does not prevent admission of any statement under another hearsay exception. Courts, however, are prohibited from:

(1) applying broader definitions in other hearsay exceptions for statements made by children twelve years of age or under at the time of the statement concerning any alleged act described in the first paragraph of section (a) than they do for other declarants; and

(2) admitting by way of a residual hearsay exception statements described in the first paragraph of section (a).

COMMENTARY: This section addresses the unique and limited area of statements made by children concerning alleged acts of sexual assault or other sexual misconduct against the child, or other alleged acts of physical abuse against the child by a parent, guardian or other person with like authority over the child at the time of the alleged act. It recognizes that children, because of their vulnerability and psychological makeup, are not as likely as adults to exclaim spontaneously about such events, making section 8-3(2) unavailable to admit statements about such events; are not as likely to seek or receive timely medical diagnoses or treatment after such events, making section 8-3(5) unavailable; and it provides more specific guidance for this category of statements than does the residual exception, section 8-9.

Subsection (a) defines the factual scope of the statements that may be admitted under the exception and the types of proceedings to which the exception applies. The proceedings included are criminal proceedings, with or without a jury, and juvenile proceedings; civil proceedings are not included. The rule applies to alleged acts of sexual assault or sexual misconduct committed by anyone against the child. It only applies to alleged acts of physical abuse committed by a parent, guardian or someone in a comparable position of authority at the time of the alleged act of physical abuse. It provides guidance on the test of trustworthiness the court must apply to the proffered statement (subdivision (1));

addresses the exclusion of testimonial statements prohibited by *Crawford. v. Washington*, 541 U.S. 36 (2004) (subdivisions (2) and (3)(B)(ii)); and, sets forth separate requirements when the child testifies and is subject to cross-examination and when the child is unavailable (subdivision (3)(B)).

Subsection (b) provides for notice to the adverse party of the proponent's intent to offer the statement.

Subsection (c) (1) prohibits expanded interpretations of other hearsay exceptions where statements covered by this section are not admissible. It is not intended to limit exceptions that, heretofore, have been legally applied to such statements. Subsection (c) (2), however, prohibits the use of the residual exception for statements treated by this section.
