

EVIDENCE OVERSIGHT COMMITTEE MEETING

May 14, 2007

2:00 p.m.

Attorney Conference Room
231 Capitol Avenue, Hartford, Conn.

Minutes

In attendance:

Hon. Joette Katz, Chair
Atty. Robert B. Adelman
Hon. Thomas J. Corradino
Hon. Thomas Bishop
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
Atty. Eric W. Weichman

Also in attendance:

Atty. Daniel B. Horwitch

1. Minutes of Meeting - March 26, 2007

The Committee approved the minutes of the meeting held on March 26, 2007.

2. Proposed new section of Code of Evidence - Tender Years

a. Draft (NEW) Hearsay Exception: Tender Years

The Committee reviewed the draft circulated in advance of the meeting and voted to make the following changes:

- In paragraph (a), as agreed at the previous meeting, insert language to make the exception applicable to alleged acts 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.
- In (a)(3)(B)(ii), add language to include statements made prior to the institution of juvenile proceedings.
- In paragraph (b), add language to include statements other than statements in writing, e.g. statements recorded by way of audio and video recording.
- In paragraph (b), substitute “trustworthiness” for “reliability” at the end of the first sentence.
- In paragraphs (c)(1) and (c)(2), clarify that the prohibition otherwise

described in those subsections applies to statements described in the first paragraph of section (a).

Professor Tait and Attorney Horwitch were requested to prepare a draft Commentary to the proposed rule. They were asked to specifically mention in the Commentary the Committee's intention with respect to paragraph (c)(1) that such paragraph was not intended to restrict the application of other hearsay exceptions as presently applied.

Attorney Horwitch was directed to circulate the revisions to the new rule, together with the draft Commentary, to the Committee members by May 22, 2007. Committee members agreed to submit their final comments regarding both the rule and Commentary to Professor Tait and Attorney Horwitch by May 25, 2007.

- b. State v. Sawyer, 279 Conn. 331 (2006) &
- c. State v. John M., 94 Conn. App. 667 (2006), cert. granted, May 31, 2006.

Professor Tait summarized the language of the two cases regarding the authority of the judges to adopt rules of evidence that affect substantive law. It was noted that the questions to be addressed in the certification of State v. John M. have been changed since notice of the granting of certification was published at 278 Conn. 916. The new questions to be addressed, not yet published, will include the authority of the court to adopt rules of evidence affecting substantive law.

- d. C.G.S. § 51-14, Rules of court. Disapproval of by General Assembly. Hearings. &
- e. 2007 Substitute Senate Bill No. 1479, AAC Court Rules

With respect to SSB No. 1479, Justice Katz opined that the bill was a positive development in that it reflected a recognition by the legislature that rules of evidence adopted by the Judges of the Superior Court carry the same weight as rules set forth in the Connecticut Practice Book. Justice Katz also expressed the opinion that the portion of the bill requiring the approval of court rules by the judiciary committee was problematic for a number of reasons. Professor Tait suggested that the part of the bill requiring legislative approval of court rules could be unconstitutional under State v. Clemente, 166 Conn. 501 (1974).

3. Senate Bill No. 1245, AAC the Admissibility of the Statement of a Child Concerning Sexual Misconduct / A Tender Years Exception to the Hearsay Rule

It was reported that the bill was dead this legislative session. It was further reported, however, that another bill, Substitute Senate Bill No. 1458, AAC Jessica's Law, also contained a tender years hearsay exception component and was still alive at the legislature. It was noted that the language contained in SSB No. 1458 contained many of the problems that the Committee identified and discussed at an

earlier meeting regarding SB No. 1245. The Committee concluded that it was not its place to contact members of the judiciary committee to discuss the matter and that it should proceed with its work on its proposed rule.

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

a. Elimination of Constancy of Accusation by Sexual Assault Victim provision of Section 6-11.

The Committee agreed to table consideration of the matter until its next meeting.

5. Next meeting.

The Committee did not establish a date for its next meeting to be held in the fall.