

CODE OF EVIDENCE OVERSIGHT COMMITTEE MEETING

February 27, 2007

2:00 p.m.

Attorney Conference Room
231 Capitol Avenue, Hartford, Conn.

MINUTES

In attendance:

Hon. Joette Katz, Chair
Atty. Joseph J. Bruckmann
Hon. Thomas J. Corradino
Atty. Susann E. Gill

Atty. Joseph Rubin
Hon. Michael Sheldon
Prof. Colin Tait
Attorney Eric W. Wiechmann

Also in attendance:

Atty. Daniel B. Horwitch

A. Old Business

1. Minutes of Meeting

The Committee approved the minutes of the meeting held on October 25, 2006.

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

a. The committee discussed the draft, new Tender Years Hearsay Exception, drafted by Professor Tait and Attorney Horwitch, based on the Model Statute published in Robert G. Marks, *Note: Should We Believe the People Who Believe the Children?: The Need for a New Sexual Abuse Tender Years Hearsay Exception Statute*, 32 Harv. J. on Legis. 207, and taking into consideration recommendations made by the committee at its previous meeting. The committee also discussed proposed revisions to the draft prepared by Attorney Gill and circulated to committee members in advance of the meeting.

After discussion, the committee voted to limit the proposal to criminal matters, involving children twelve years old or younger (age derived from C.G.S. § 54-86g), who are the alleged victims of acts of sexual misconduct; that it not require that the statement be the first statement about the alleged act by the child; that it need not detail the bases for determining whether the child is unavailable; and, that there be a good cause exception to the requirement that notice of the proposed use of such a statement be given sufficiently in advance of the proceeding to provide to the adverse party a fair opportunity to prepare to meet the statement.

Professor Tait and Attorney Horwitch agreed to prepare and circulate a revised draft in advance of the next meeting. Professor Tait and Attorney Horwitch also agreed to review "Alabama's Child's Hearsay Exception," 47 Ala. L. Rev. 215 (1995-1996), for the purpose of

suggesting additional, specific proceedings in which the exception might be applied, e.g., abuse, exploitation.

b. Senate Bill No. 587, An Act Concerning The Admissibility of the Statement of a Child Concerning Sexual Misconduct

The committee discussed the bill and its successor, Senate Bill No. 1245, a copy of which was circulated at the meeting, and noted that while the bill's Statement of Purpose states that it is "[t]o facilitate the prosecution of child sexual assault cases by establishing a tender years exception to the hearsay rule of evidence," the language of the bill make it applicable to juvenile and civil proceedings as well. Committee members also noted that the bill would apply to children under sixteen years of age and does not provide a good cause exception to the advance notice to the adversary provision. The Committee further noted that a public hearing was scheduled on the bill for the following day. The committee voted to ask the External Affairs division to communicate to the Legislature that it had been addressing the concerns that were apparently the basis for the bill and intended to draft a provision for the Code of Evidence to address those concerns.

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

The committee tabled consideration of its prior decision to recommend the elimination of the Constancy of Accusation by Sexual Assault Victim provision of Section 6-11, a decision which it had also reserved to itself the opportunity to reconsider after completing its review of a proposed tender years hearsay exception

B. New Business

1.A. Open Meeting

A copy of a January 16, 2007 letter from Senior Associate Justice David M. Borden to the Chair, communicating the December 19, 2006 vote of the Judges of the Superior Court that the meetings of the committee be open, was circulated to the committee members.

1. Section 4-4(a) Character Evidence Not Admissible to Prove Conduct; Exceptions

The committee took no action regarding the December 11, 2006 letter from Attorney Susann E. Gill to Justice Peter T. Zarella, Chair, Rules Committee of the Superior Court, regarding the proposed amendment to Section 4-4 (a) submitted to the Rules Committee.

2. Next meeting

The committee scheduled its next meeting for Monday, March 26, 2007 at 2:00 p.m. in the Attorney Conference Room, 231 Capitol Avenue, Hartford, Conn.