

ADVISORY COMMITTEE ON THE RULES OF EVIDENCE

MINUTES

December 6, 2013

Present: Jerome O'Neill, Chair; Hon. Beth Robinson; Members John Boylan; Sandy Levine; Elizabeth Miller; Erica Marthage; Pamela Marsh; Karen McAndrew; Kenneth Kreiling; Clara Gimenez, Reporter.

There were no members of the public in attendance.

Chair called meeting to order at 9:35.

I. Proposed amendments to 804A and 807 Tina Rainville, Chief Deputy State Attorney, Bennington County, presented the proposal at the request of Erica Marthage.

a. Admission of statements related to domestic assault: The proposal is to amend 804A and 807 in order to meet the needs of children who have suffered or witnessed domestic violence. Ms. Rainville provided background on research on the effects of PTSD on the brain, particularly on children. According to some studies, the effects of witnessing /experiencing domestic violence on a child's brain may be more profound than those caused by sexual abuse.

Ms. Rainville explained that this research supports the amendment of 804A and 807 because it will address the same concerns that prompted the enactment of the rule in the first place and it will offer the same procedural safeguards. With regard to the amendment of 807, Ms. Rainville noted that the Supreme Court has made it clear that the use of close-circuit systems is as permissible in cases involving children victims of physical abuse as in cases dealing with sexual abuse. Federal courts and some jurisdictions also allow this practice.

Resolution: The committee unanimously agreed to consider this proposal, but found that additional research and discussion is needed. Of particular concern was the expansion of rule 804A to include statements made by a child who is not the victim but is witness to a domestic assault. There were also many questions regarding the application of procedural safeguards.

Clara Gimenez will research the constitutional parameters as well as other jurisdictions' practices and present results at the January meeting. Several members expressed the importance of hearing from the defense, family bar, and other constituencies. The Chair will contact representatives and invite them to attend the January meeting.

b. Change of language in rule 807

Ms. Rainville proposed replacing the term "mentally retarded" for "intellectually disabled." This would create a discrepancy of the rule with the statute to which it

refers (14 V.S.A. § 3061) that would need to be addressed, perhaps by adding a definition section to the rule, or by some other alternative.

Resolution: The reporter will update the committee on the status of S.27, a pending bill that contains a thorough overhaul of the Vermont Statutes to eliminate offensive language. It may make sense to wait and change the rule after the bill passes.

c. Amendment of 807 (e)

The amendment would eliminate the requirement that the closed-circuit TV be a two-way system. According to Ms. Rainville, the two-way option defeats purpose of child protection. Pursuant to AO 38, Bennington County is already authorized to use a one-way system, with specific safeguards.

Resolution: Convene in January with research and discuss with the family and defense bar at the same time as other proposed amendments.

II. Restyling

The Committee requested an update on the progress of other jurisdictions regarding the restyling of their rules to comport with the restyled FRE. The reporter will provide the update in January.

Meeting adjourned by unanimous consent at 10:50 AM.

Respectfully submitted,

Clara Gimenez, Reporter