**TIPS FOR LAWYERS**

**Admissibility of Records in Juvenile Court Proceedings**

**To what extent do the Rules of Evidence apply in juvenile court proceedings?**

* Although there is a perception that the Rules of Evidence do not apply in Juvenile Court proceedings, Connecticut Code of Evidence § 1-1 specifically provides that “the Code applies to all proceedings in the superior court in which facts in dispute are found, except as otherwise provided by the Code, the General Statutes or the Practice Book.”
* Accordingly, the Rules of Evidence must be read in conjunction with Conn. P.B. § 32-2 which provides that “testimony may be given in narrative form and the proceedings shall at all times be as informal as the requirements of due process and fairness permit.” Additionally, P.B. § 35a-9 provides that during the *dispositional hearing*, the court may “admit into evidence any testimony relevant and material to the issue of the disposition, including events occurring through the close of the evidentiary hearing.”
* Finally, the Connecticut appellate court in *In re Juvenile Appeal*, that a juvenile proceeding “is essentially civil in nature and that certain procedural informalities are constitutionally permissible.” 3 Conn App. 184 (1986). The appellate court cautioned, however, that despite the “guise of informality … procedural safeguards cannot be swept away.” Accordingly, the court determined that a “liberal rather than a strict application of the formal rules of evidence” may be permitted, so long as “due process is observed. … [Yet] where such evidence is likely to be determinative of the matter, the court should return to the more formal rules of evidence.” *Id.*

**Are there hearsay exceptions specific to juvenile court proceedings?**

* Yes. Connecticut General Statute § 46b-129(g) specifically provides that during a ***contested OTC hearing***, “credible hearsay evidence regarding statements of a child to a mandated reporter or to a parent” may be admissible “upon a finding that the statement is reliable and trustworthy and that admission of such statement is reasonably necessary.” Additionally, an affidavit provided by a mandated reporter may be admitted as well without the need for the reporter to appear unless called by the respondent or child provided the statement:

1. was provided at the preliminary hearing;
2. reasonably describes the qualifications of the reporter and the nature of his contact with the child; and
3. Contains only the direct observations of the reporter and statements made to the reporter that would be admissible if the reporter were to testify to them in court and any opinions reasonably based thereupon.

* Additionally, P.B. § 35a-7 provides that during the disposition hearing (read: *not for adjudication purposes)*, the court “may admit into evidence any testimony relevant and material to the issue of disposition, including events occurring through the close of the evidentiary hearing.” This language is often interpreted by practitioners as permitting hearsay in the dispositional phase of a contested hearing.
* Note that the adjudicatory and dispositional phases of a trial are almost always held simultaneously (despite P.B. § 35a-7 which provides that hearings may be bifurcated). Therefore it is incumbent upon counsel for respondent to ensure that any hearsay evidence (to the extent that such evidence is admitted by court) is considered for *dispositional purposes only*.
* Remember that all of the Code’s hearsay rules and exceptions are still applicable in contested juvenile court hearings. These rules include (but are not limited to):

1. Business record foundation C.G.S. 52-180
2. Admissions of parties (note that statements of a child are *not* admissible as party statements *In re Jason S.,* 9 Conn. App. 98 (1986))
3. Need for certification of public records
4. Inadmissible of unduly prejudicial information
5. Residual hearsay exception *State v. Sharpe*, 195 Conn. 651

**Consider admissibility of documents commonly found in a child protection case file:**

* Psychological Evaluation: admissible per order of the court and as a document prepared by expert witness. Evaluator may rely on hearsay for expert opinion. Other information contained in report may still be subject to removal in a contested hearing provided information is irrelevant, unduly prejudicial, or opinion information exceeding scope of evaluator’s established expertise. Hearsay contained in document must be subject to cross-examination. *See In re Stacey G.*,
* DCF Investigation Protocol: Admissible as a business record. Conn. Gen. Stat. § 52-180. However, business records are still subject to other rules of evidence. Hearsay contained in business record must still be otherwise admissible. Note that it may be possible to qualify the Social Worker as an expert witness and therefore allow for the admission of hearsay as information reasonably relied upon by the expert witness. Note that the offeror must identify the worker’s specific area of expertise. For example: the social worker may be an expert in the area of *investigations*, and therefore the hearsay statements are centralto his/her conclusions. Remember however that the statements still can’t be admitted for the truth of the matter asserted. Remember also that third party statements within the business record are admissible so long as the proponent of the statement had a *business duty* to report.
* Drug test analysis/report: admissible as a business record through creator of the report. Will often be stipulated to by the parties.
* DCF Running Narrative. Similar to the DCF Investigation Protocol, the narrative contains numerous hearsay statements and other statements of questionable admissibility. Opponent of document must identify specific objections and DCF must explain applicable hearsay exceptions. Specific pages may be redacted prior to admission as a full exhibit.
* Child’s statement regarding abuse or neglect. These statements are not the admission of a party opponent. *In re Jason S.,* 9 Conn. App. 98 (1986).) However, possible hearsay exceptions may allow for admissibility, including: “statement made for purposes of medical treatment,” “spontaneous utterance” or “present sense impression.” 8-3(4). Remember that a child’s “statement to mandated reporter may come in during a contested OTC hearing per provisions of C.G.S. § 46b-129(g). This exception applies only to OTC hearings. In a neglect trial or termination trial, the affiant must be present or the opponent of the statement must object on hearsay and deprivation of right to confront witnesses. Additionally, the appellate court held that child’s statement that he wanted to “make love” to his sister was admissible as a “verbal act.” *In re Juvenile Appeal (85-2),* 3 Conn. App. 184 (1985). Statements made regarding abuse by a child younger than age 12 are subject to the “tender years” exception rules and procedures. Code of Evid. § 8-10. These statements may be admissible through a third party if certain conditions regarding the reliability of the statements are met. Statements that are subject to the “tender years” rule but that do not meet the rule’s criteria for admissibility may not be admitted through the “residual hearsay” exception. *Id.* A child’s statements not subject to the “tender years” rule may be admitted through the “residual hearsay” exception. *See* *In re Tayler F.*,296 Conn. 524 (2010). *Tayler F.* provides a detailed discussion of what must be demonstrated to invoke the “residual hearsay” exception in such cases.
* Hospital social worker affidavit. Note, that affidavit only admissible per C.G.S. §46b-129 and that certain statements in affidavit might be admissible while others are not. For example, if the affiant is an LCSW and the document contains statements such as “lab test positive for cocaine,” such statement lies outside the scope of the statutory hearsay exception. Also, can affiant offer a statement as to the ultimate issue? Additionally, consider whether the affiant is qualified to provide a statement regarding the grounds for the Order of Temporary Custody (i.e. imminent danger.) Arguably, only an expert may testify as to seriousness or imminence.
* Affidavit by social worker. Again, not admissible unless specific requirements of C.G.S. § 46b-129 are met. Subject to numerous admissibility challenges in OTC and other contested hearings.
* Police record: admissible if provided as certified public document. Remember to consider admissibility of convictions that have been *nolled* or that are too remote in time or circumstance to be relevant. TheConnecticut Supreme Court has not established an absolute time limit on the admissibility of certain convictions, but the Court has suggested a ten year limit. *State v. Carter*, 228 Conn. 431 (1994). Evid. Rule 6.7
* Certificates of program completion: hearsay unless identified by service provider.
* Social Study: The social study will be a multi-page document outlining all of DCF’s findings about the family, each parent’s strengths and weaknesses, and including DCF’s dispositional recommendation (i.e. child should go home with parent, child should be committed to DCF, etc). The document, while in some ways useful, may contain multiple hearsay statements or allegations with imprecise foundation. All parties are entitled to a copy of the Social Study in advance of a hearing or Case Status Conference, and are entitled to cross-examine the author prior to the admission of the document. P.B. § 35a-10. The Social Study is also subject to motions in limine for the purpose of challenging inadmissible contents.
  1. Is the Social Study admissible?
* Practice Book § 35a-9 *requires* that the court receive a social study prior to issuing a dispositional ruling. Section 35a-9 also provides that the court may consider all evidence that is relevant and material to disposition. Therefore, the Social Study is an admissible document, and relevant hearsay contained therein may be permitted.
  1. What if you want to limit the admissibility of the Social Study?
* P.B. § 35a-9 does not explicitly provide that hearsay is permissible in the Social Study and appellate case law (cited above) provides that while the rules of evidence or procedure may be relaxed somewhat in juvenile court, the court must still observe the requirements of due process and where the “evidence is likely to be determinative of the matter, the court should return to the more formal rules of evidence.” *In re Juvenile Appeal*, 3 Conn app. 184 (1986). Thus, you can argue to remove hearsay from the Social Study document prior to admitting. Remember, however, that the Practice Book permits the court to consider any evidence “relevant and material” to disposition. P.B. § 35a-9.

Note that a court may admit a Social Study under the “business record” exception to the hearsay rule. *In re Ellis V.*, 120 Conn. App. 523 (2010). The business record foundation must be laid and the statements contained therein must emanate from those with a business duty to report.

* Additionally, although case law provides that the court may rely on the social study for both adjudicatory and dispositional purposes (*In re Tabitha,* 39 Conn. App. 353 (1995)*)*, if *hearsay statements* contained within the social study are admitted you may ask the court to consider such statements for dispositional purposes only.
* Prepare a redacted version of the Social Study or submit a motion *in limine* seeking to strike irrelevant or hearsay statements from the document altogether.