

#2017-002

Carolyn A. Koegler

From: Justice Robert J Lynn
Sent: Wednesday, May 10, 2017 1:49 PM
To: Hon. William Delker; danfeltes@gmail.com; Abigail Albee
Cc: Carolyn A. Koegler
Subject: Subcommittee meeting re Proposed Rule 801(d)(1)(B)(ii)

Colleagues,

This will confirm the results of our subcommittee meeting on May 8, 2017, regarding the question of whether the Advisory Committee on Rules should recommend to the Supreme Court that New Hampshire adopt the above rule. This rule, which has been adopted in the Federal Rules of Evidence, would permit the substantive admissibility of prior consistent statements made by a declarant who testifies at trial for the purpose of "rehabilitating the declarant's credibility as a witness when attacked on another ground." The purpose of the rule appears to be not so much to expand the circumstances under which prior consistent statements may be admitted (although it arguably would envision some expansion, at least under New Hampshire law, since it would not be limited in application to circumstances where the declarant's credibility was attacked based on a prior inconsistent statement), but to provide that when such statements are already admissible under existing law, the statement will come in as substantive evidence rather than solely for credibility purposes.

The consensus of our subcommittee was that, while there are good arguments on both sides of the question concerning whether to adopt this rule, in light of the fact that the rule is very new even in the federal system, and in light of the fact that we recently adopted a new provision of the ew Hampshire Rules of Evidence. dealing with prior consistent statements, the best course was for us to take no action on this proposal for at least one year. That will allow time both to see how our new rule is working and for the further development of case law construing the federal rule.

By copy of this email to Carolyn Koegler, I am requesting that she make note of the subcommittee's action so that we may advise the full Committee at our June meeting, and inform them of our recommendation. I also request that Carolyn tickle this issue to be raised again at the September 2018 meeting of the ACR.

Thanks to everyone for your consideration of this matter.

Bob