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Rule 803(8)(C): Public Records and Reports

RULE 803(8)(C): PUBLIC RECORDS AND REPORTS

Federal Rule of Evidence 803(8)(C) states:

> The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
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> (8) Public records and reports. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth . . . (C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness.[1]

The principal justifications for Federal Rule of Evidence 803(8)(C) are twofold. First, there is a presumption that a public official will perform his duty in a proper fashion, thus making public records and reports trustworthy.[2] Second, such a hearsay exception is convenient because it is unlikely that a public official will remember intricate details of a record or report without the help of a written record.[3]

The dilemma in analyzing what kind of record and report evidence should be admitted under Federal Rule 803(8)(C) was based upon the interpretation of the words "factual finding." Two diametrically opposed interpretations of these words emerged during Congress' committee hearings on the rule. The House Committee stated that the phrase "factual findings" should be given a strict interpretation such that opinions or evaluations found in public reports would not be admissible under the

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1. FED. R. EVID. 803(8)(C). *See also* MCCORMICK ON EVIDENCE §§ 295-300, at 507-13 (John William Strong ed., 4th ed. 1992); JACK B. WEINSTEIN & MARGARET A. BERGER, WEINSTEIN'S EVIDENCE ¶ 803(1)[01], at 86-95 (Joseph M. McLaughin ed., 1995).

2. Gentile v. County of Suffolk, 129 F.R.D. 435 (E.D.N.Y. 1990). The court held that a report of a Temporary Commission of Investigation, which found that the police department and the district attorney's office failed to adequately supervise personnel, was trustworthy under 803(8)(C). *Id.* at 458.

3. *Id.*

803(8)(C) hearsay exception.[4] The Senate Committee, however, stated that the House Committee's interpretation was too narrow and subverted the Advisory Committee's intent.[5] The Senate Committee concluded that a broader interpretation would "assume[] admissibility in the first instance of evaluative reports," but such reports would still be subject to inadmissibility if the source of the report lacked trustworthiness.[6]

Rule 803(8)(C) was extensively analyzed by the United States Supreme Court in *Beech Aircraft Corp. v. Rainey*,[7] to determine whether the rule should extend to "conclusions" and "opinions" contained in public records and reports.[8] In *Beech*, the evidence sought to be admitted was an investigative report which included opinions and conjectory hypothetical scenarios concerning the possible causes of a plane crash.[9] The Supreme Court chose the broader interpretation of the rule in accordance with the Senate Committee's suggestion, and held that investigatory reports stating conclusions and opinions are admissible under 803(8)(C).[10]

The Court's central argument in favor of a broad interpretation rested on the actual language of the rule, as well as the Advisory Committee's Note to the rule,[11] neither of which call for a

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4. H.R. REP. NO. 650, 93d Cong., 1st Sess., pt. 14 (1973), *reprinted in* 1974 U.S.C.C.A.N. 7075,7088.

5. S. REP. NO. 1277, 93d Cong., 2d Sess. 17 (1974), *reprinted in* 1974 U.S.C.C.A.N. 7051, 7064.

6. *Id.*

7. 488 U.S. 153 (1988).

8. *Id.* at 156.

9. *Id.* at 157.

10. *Id.* at 170. The court stated that "[a]s long as the conclusion is based on a factual investigation and satisfies the Rule's trustworthiness requirement, it should be admissible along with other portions of the report." *Id. See* United Airlines, Inc. v. Austin Travel Corp., 867 F.2d 737, 742-43 (2d Cir. 1989) (holding that the district court's refusal to admit governmental reports due to their untrustworthiness in the area in which they were being reported as well as the determination that the reports were "interim or inconclusive nature" was completely within the discretion of the district court).

11. FED. R. EVID. 803(8)(C) advisory committee's note (discussing the justification for this hearsay exception; public records are assumed to be

distinction between "fact" and "opinion" in public records or reports.[12] In further support of their decision, the Court stated that drawing a distinction between "fact" and "opinion" would be problematic because the difference between a fact and an opinion is only a matter of degree.[13] The Supreme Court's rationalization for adopting an interpretation of the rule which would presume admissibility was the existence of an "ample provision for escape" if the surrounding circumstances indicated untrustworthiness from the source:[14]

> That "provision for escape" is contained in the final clause of the Rule: evaluative reports are admissible "unless the sources of information or other circumstances indicate lack of trustworthiness." This trustworthiness inquiry -- and not an arbitrary distinction between "fact" and "opinion" -- was the Committee's primary safeguard against the admission of unreliable evidence, and it is important to note that it applies to all elements of the report.[15]

The New York courts have not dealt with the admissibility of public records and reports with the same conviction as the Supreme Court. The present law in New York is vague, with some decisions adopting a broader Supreme Court type of analysis, and others adopting a narrow interpretation of the hearsay exception. Public records and reports can generally be admitted into evidence in New York in one of two ways. First, they can be admitted under section 4520 of the Civil Practice Law and Rules [hereinafter C.P.L.R.].[16] However, admitting

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admissible "in the first instance" since a "public official will perform his duty properly" and be unlikely to "remember details independently of the record.").

12. *Beech*, 488 U.S. at 168.

13. *Id.*

14. *Id.* at 167 (quoting FED. R. EVID. 803(8)(C) advisory committee's note).

15. *Id.*

16. N.Y. CIV. PRAC. L & R. 4520 (McKinney 1992). Section 4520 states:

> Where a public officer is required or authorized, by special provision of law, to make a certificate or an affidavit to a fact ascertained, or an act performed, by him in the course of his official duty, and to file or

public records through C.P.L.R. section 4520 is extremely difficult based upon the restrictive language of the statute.[17] Second, public records and reports can be admitted under New York's common law hearsay exception.[18]

New York's common law does not take a similar approach to the United States Supreme Court in *Beech* with regard to the public record hearsay exception. New York has been hesitant to admit reports containing "opinions" and "conclusions" that Federal Rule 803(8)(C) allows.[19]

New York does not generally admit conclusions or opinions in criminal cases. In *People v. Hampton,*[20] the defendants were charged with manslaughter for allegedly beating their four-year-old daughter to death.[21] The court refused to admit into evidence an autopsy report stating an opinion as to the child's cause of death.[22] The court held that the autopsy report constituted an

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deposit it in a public office of the state, the certificate of affidavit so filed or deposited is prima facie evidence of the facts stated.

Id. See In re Petition of Zurich-American Ins. Co., 89 A.D.2d 542, 543, 452 N.Y.S.2d 633, 634 (1st Dep't 1982) (reversing the trial court's decision to admit results of a Department of Motor Vehicles search that was not filed in a public office nor could it be defined as a public document in compliance with CPLR § 4520).

17. N.Y. CIV. PRAC. L & R. 4520 (McKinney 1992). This statute "creates a hearsay exception for certain records prepared by public officers." *Id.* The public record must meet several requirements: (1) the record must be made by a public officer; (2) it must be in the form of a "certificate" or "affidavit"; (3) the record must be required or authorized "by special provision of law"; (4) it must be made in the course of the officer's official duty; (5) it must be a record of a fact ascertained or an act performed by the officer; and (6) it must be on file or deposited in a public office of the state. *Id.*

18. *See* People v. Hoats, 102 Misc. 2d 1004, 1010, 425 N.Y.S.2d 497, 501 (County Ct. Monroe County 1980). ("Under the common law exception, when a public officer is authorized by the nature of his official duty to keep records of transactions occurring in the course of his duty, the record so made by him . . . is admissible in evidence.").

19. Randi M. Simanoff, Comment, *Distinctions Between the Public Records Exception to the Hearsay Rule in Federal and New York Practice*, 11 TOURO L. REV. 195, 215-16 (1994).

20. 38 A.D.2d 772, 327 N.Y.S.2d 961 (3d Dep't 1972).

21. *Id.*

22. *Id.* at 773, 327 N.Y.S.2d at 962.

admissible public record; however, opinions regarding the cause of death contained in such a report were not admissible under the hearsay exception.[23]

New York also extends its restrictive view of admissible public records to civil suits. In *Stevens v. Kirby*,[24] the plaintiff sued a tavern owner for negligence for injuries which he received when he was involved in a fight in the defendant's parking lot.[25] At trial, the plaintiff sought to introduce evidence that the county deputy sheriffs had responded to four prior incidents at the defendant's tavern, and that the prior calls had resulted in the arrest of tavern patrons for disorderly conduct.[26] Although the evidence of the prior calls was included in a State Liquor Authority Report, the court refused to admit the police reports underlying the Liquor Authority's report because "they contained hearsay statements relevant to ultimate issues of fact not within the personal knowledge of the sheriff deputies."[27]

There are some New York decisions, however, that lean toward the broader Supreme Court interpretation of the public record hearsay exception. For instance, in *Kozlowski v. City of Amsterdam*,[28] the decedent committed suicide after being incarcerated for driving while intoxicated.[29] The Medical Review Commission of the State Commission of Corrections prepared a

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23. *Id. See* People v. Violante, 144 A.D.2d 995, 996, 534 N.Y.S.2d 281, 283 (4th Dep't 1988) ("while the autopsy findings are admissible to establish the primary facts stated therein, opinions as to the cause of death contained in such report are not admissible").

24. 86 A.D.2d 391, 450 N.Y.S.2d 607 (4th Dep't 1982).

25. *Id.* at 391, 450 N.Y.S.2d at 609.

26. *Id.* at 392, 450 N.Y.S.2d at 609.

27. *Id.* at 395, 450 N.Y.S.2d at 611. *See* Kelly v. Diesel Constr. Div. of Carl A. Morse Inc., 35 N.Y.2d 1, 8, 315 N.E.2d 751, 754, 358 N.Y.S.2d 685, 690 (1974) (allowing into evidence an elevator inspector's accident report but disallowing the superintendent's opinion as to the cause of the accident which was contained therein because the superintendent was not authorized to make such a treatment).

28. 111 A.D.2d 476, 488 N.Y.S.2d 862 (3d Dep't 1985).

29. *Id.* at 476-77, 488 N.Y.S.2d at 863.

report pursuant to statutory authority,[30] which concluded that the defendant failed to maintain proper supervision of the decedent after incarceration.[31] The court held that the document was admissible under the public document common law exception since the document was statutorily mandated, relevant and properly prepared.[32] Similarly in *Lichtenstein v. Montefiore Hospital and Medical Center*,[33] the court held that a hospital's record, which contained a doctor's opinion that a patient had committed suicide, was admissible.[34] In admitting the evidence, the court stated that the hospital's judgment was "related to the hospital's business of diagnosis and treatment just as much as the determination by the hospital of any other cause of death of a patient where that cause is related to, or even refutes, the diagnosis of the condition for which the patient was under treatment."[35]

New York also has a third mechanism which allows opinions and conclusions into evidence: the business/official records exception under C.P.L.R. section 4518.[36] Because of the narrow

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30. *Id.* at 478, 488 N.Y.S.2d at 864. The report was prepared in compliance with Correction Law § 47. N.Y. CORRECT. LAW § 47 (McKinney 1987). Section 47(1)(a) specifies that the duties of the board shall include the duty to "[i]nvestigate and review the cause and circumstances surrounding the death of any inmate of a correctional facility." N.Y. CORRECT. LAW § 47(1)(a) (McKinney 1987). The Board also has a duty to submit a written report on its findings pursuant to § 47 (1)(d). N.Y. CORRECT. LAW § 47(1)(d) (McKinney 1987).

31. *Id.* at 478, 488 N.Y.S.2d at 864.

32. *Id.*

33. 56 A.D.2d 281, 392 N.Y.S.2d 18 (1st Dep't 1977).

34. *Id.* at 285-86, 392 N.Y.S.2d at 21-22.

35. *Id.* at 286, 392 N.Y.S.2d at 21-22.

36. N.Y. CIV. PRAC. L. & R. 4518 (McKinney 1992). Section 4518 provides in pertinent part:

> (a) Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the judge finds that it was made in the regular course of any business and that it was the regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter . . . .

scope of C.P.L.R. section 4520 and the common law public records exception, most police reports are admitted into evidence as business records through C.P.L.R. section 4518.[37] This is unlike the federal courts, which consider police reports to be public records.[38] New York's use of C.P.L.R. section 4518 results in the admission of some opinion and conclusion evidence in accord with the Supreme Court's ruling in *Beech*.[39]

It is evident that New York is faced with the same dilemma in interpreting the common law that Congress faced when interpreting Rule 803(8)(C). Thus, while the federal courts permit public records containing opinions and conclusions into evidence through 803(8)(C), New York courts restrict such admissions to a few narrow situations.

Id. See Stein v. Lebowitz Pine View Hotel Inc., 111 A.D.2d 572, 489 N.Y.S.2d 635 (3d Dep't 1985). Plaintiff brought action for wrongful death against hotel owners when her husband drowned in the swimming pool of their hotel. *Id.* at 572-73, 489 N.Y.S.2d at 637. The court found that the contents of the file maintained by the decedent's physician and his staff were admissible under 4518(a). *Id.* at 574, 489 N.Y.S.2d at 638.

37. Simanoff, *supra* note 19, at 221.

38. Simanoff, *supra* note 19, at 221.

39. Simanoff, *supra* note 19, at 209 (stating since New York's public record exception to the hearsay rule is only based on two narrow sources [CPLR 4520 and the common law], "CPLR 4518 is the most common mechanism that a New York attorney will utilize when seeking to admit public records under a hearsay exception." *Id.* at 209).