



MINNESOTA JUDICIAL TRAINING UPDATE



RESIDUAL HEARSAY EXCEPTION RULE – Minn. R. Evid. 807

QUESTION: THE MORNING OF TRIAL YOU ARE ASKED TO RULE ON THE ADMISSIBILITY OF A HEARSAY STATEMENT UNDER THE RESIDUAL EXCEPTION TO THE HEARSAY RULE (Minn. R. Evid. 807). WHAT IS THE RESIDUAL HEARSAY EXCEPTION RULE AND WHAT 6 STEP ANALYSES MUST YOU FOLLOW TO PROPERLY RULE?

State v. Ahmed, Mn Ct App, __ N.W.2d __ (2010), A09-724, May 11, 2010.

RESIDUAL HEARSAY EXCEPTION RULE: Minn. R. Evid. 807, sometimes referred to as the “catch-all exception,” allows admission of hearsay statements that do not fall under the usual hearsay exceptions found in Minn. R. Evid. 803 and 804 but have “equivalent circumstantial guarantees of trustworthiness” (which simply means the statement must be reliable).

SIX STEP ANALYSIS – FINDINGS THE COURT MUST MAKE:

1) Notice Requirement:

- a) Proponent must provide adverse party with sufficient notice in advance of trial or hearing. The notice must contain the proponent’s intention to offer the statement and the particulars of it, including the name, address and present whereabouts of the declarant.

2) Statement Is Offered As Evidence Of A Material Fact:

- a) This is self evident and usually not in dispute.

3) Statement Is More Probative On The Point For Which It Is Offered Than Any Other Evidence That Can Be Procured Through Reasonable Efforts;

- a) This requirement is usually satisfied by a showing of NEED.

4) The Statement Must Be Found By The Court To Be RELIABLE: (This Last Finding Tends To Generate The Most Debate And Discussion):

- a) Standard is: “Totality Of The Circumstances”
- b) The Court **MUST** focus on the circumstances actually surrounding the making of the statement.
 - i) For Example: In child-abuse cases, these circumstances include whether the statement was spontaneous, whether the questioner had a preconceived idea of what the child should say, whether the child had any apparent motive to fabricate, whether the statement was: in response to leading questions; was of the type one would expect a child of that age to fabricate; remained consistent over time; and the mental state of the child at the time of the statements.
- c) Important Distinction: The Court is **NOT** required to evaluate the credibility of the person who testifies to the out-of-court statement when determining the reliability of the hearsay statement. The focus of Rule 807 is the statement, not the testifying witness who heard the statement.

5) The General Purposes Of These Rules And The Interests Of Justice Will Best Be Served By Admission Of The Statement Into Evidence.

That completes your Rule 807 analysis, however:

You Still Have One More Finding To Make:

6) Is The Statement “Testimonial” Under Crawford V. Washington?

- a) All testimonial statements are inadmissible at a defendant’s trial unless defendant had an opportunity to cross-examine the witness. *See Judicial Training Update 10-8 for a full discussion of Washington v. Crawford and Testimonial Statements.*
- b) A statement is likely testimonial if either a declarant or government questioner is acting, to a substantial degree, in order to produce a statement for trial. Statements made to non-government questioners, who are “not acting in concert with the government” are considered non-testimonial.

IF NON-TESTIMONIAL - STATEMENT IS ADMISSIBLE UNDER RULE 807