8.27. Statement of Pedigree

(1) An out-of-court statement by a declarant concerning the declarant's or another person's birth, adoption, death, lineage, marriage, legitimacy or other relationship between or among family members or other similar fact of personal or family history, made before the controversy, is admissible even though the declarant had no means of acquiring personal knowledge of the matter stated, provided that the relationship of the declarant with the family is established by some proof independent of the declaration itself, and the declarant is not available as a witness.

(2) A statement admissible under this exception may be in any form.

(3) A witness may testify to his or her own pedigree.

Note

Subdivision (1). Pedigree means the history of family descent that is transmitted from one generation to another and encompasses such matters as birth, descent, marriage, death and relationship. Pedigree declarations "extend to any inquiry necessarily involving these events, or which tend to show that either, some or all of them took place or did not." (*Washington v Bank for Sav. in City of N.Y.*, 171 NY 166, 175 [1902].)

Pedigree declarations are "a well known and recognized exception to the general rule excluding hearsay evidence." (*Eisenlord v Clum*, 126 NY 552, 563 [1891].) They are "admitted on the principle that they are the natural effusions of persons who must know the truth and who speak on occasions when their minds stand in an even position without any temptation to exceed or fall short of the truth." (*Aalholm v People*, 211 NY 406, 412 [1914].) The exception encompasses statements by a declarant concerning his or her personal family history or another's personal or family history.

The formulation of the rule is based on the decisional law of the Court of Appeals. Thus, the Court has held that

- a pedigree declaration must have been made before the controversy giving rise to the action (*Aalholm*, 211 NY at 412-413; *Young v Shulenberg*, 165 NY 385, 388 [1901]);

- the declaration to be admissible "need not be upon the knowledge of the declarant" **(***Eisenlord*, 126 NY at 564); and

- "[t]he declarant must be related either by blood or affinity to the family concerning which he speaks" (*Aalholm*, 211 NY at 413).

The Court of Appeals has emphasized as an "important qualification" to the exception that, "before a declaration can be admitted in evidence, the relationship of the declarant with the family must be established by some proof independent of the declaration itself," although proof of the family relationship may be "slight." (*Aalholm*, 211 NY at 414-415; *Young*, 165 NY at 388 [" 'slight proof of the relationship will be required, since the relationship of the declarant with the family might be as difficult to prove as the very fact in controversy' " (citation omitted)].)

As to unavailability of the declarant, the Court of Appeals has recognized three grounds: death, incompetency, and absence beyond the jurisdiction. (*See Young*, 165 NY at 388.) *Young* does not indicate whether these are the only grounds of unavailability that are recognized for this hearsay exception or whether other grounds might be acceptable.

Subdivision (2) is derived from the numerous decisions in which this exception was in issue. (*See Aalholm*, 211 NY at 412 [oral statements]; *Young*, 165 NY at 388 [deeds and immigration acknowledgment before a United States minister]; *Matter of Whalen*, 146 Misc 176, 189 [Sur Ct, NY County 1932] [statements made "in a family bible, inscriptions on tombstones, etc."].)

Subdivision (3) is derived from *Koester v Rochester Candy Works* (194 NY 92, 97 [1909] [witness competent to testify to his or her own age]) and *People v Lewis* (69 NY2d 321, 324 [1987] [witness permitted to testify that defendant was her father]).