

8.25. Past Recollection Recorded

A memorandum or record made or adopted by a witness concerning a matter about which that witness had knowledge, but about which the witness lacks sufficient present recollection to enable the witness to testify fully and accurately, even after reading the memorandum or record, is admissible, provided: (a) the memorandum or record was made or adopted by the witness when the matter was fresh in the witness's memory and (b) the witness testifies that the memorandum or record correctly represented the witness's knowledge and recollection when made.

Note

This rule is derived from *People v Taylor* (80 NY2d 1, 8 [1992] [“(A) memorandum made of a fact known or an event observed in the past of which the witness lacks sufficient present recollection may be received in evidence as a supplement to the witness's oral testimony. The requirements for admission of a memorandum of a past recollection are generally stated to be that the witness observed the matter recorded, the recollection was fairly fresh when recorded or adopted, the witness can presently testify that the record correctly represented his knowledge and recollection when made, and the witness lacks sufficient present recollection of the recorded information” (citations omitted)]; *see also People v Caprio*, 25 AD2d 145, 150 [2d Dept 1966]), *affd* 18 NY2d 617 [1966]; *Halsey v Sinsebaugh*, 15 NY 485 [1857]).