6.01. Competency of a Witness to Testify

Every person is competent to be a witness unless the court determines that the person does not have the capacity to warrant the reception of the person's evidence. A person may be competent to be a witness but may not be competent to testify to specific matters as a result of the application of other rules of evidence.

Note

The rule is derived from the New York State Constitution, statutory provisions, and Court of Appeals precedent. (*See e.g.* NY Const, art I, § 3 ["no person shall be rendered incompetent to be a witness on account of his or her opinions on matters of religious belief"]; CPLR 4512 ["Except as otherwise expressly prescribed, a person shall not be excluded or excused from being a witness, by reason of his interest in the event or because he is a party or the spouse of a party"]; CPLR 4513 ["A person who has been convicted of a crime is a competent witness"]; CPL 60.20 [1] ["Any person may be a witness in a criminal proceeding unless the court finds that, by reason of infancy or mental disease or defect, he does not possess sufficient intelligence or capacity to justify the reception of his evidence"]; *People v Parks*, 41 NY2d 36, 45 [1976] ["The traditional rule still followed in this State, is that all adults are presumed to be competent to testify . . . ."]; *People v Fuller*, 50 NY2d 628, 636 [1980] ["Age alone is no testimonial infirmity"]; *Matter of Brown v Ristich*, 36 NY2d 183, 188 [1975] ["All adults are presumed competent to testify"]; *People v Rensing*, 14 NY2d 210, 213 [1964] ["The capacity of a person to be a witness is presumed"].)

The Court of Appeals has rejected arguments that a person is incompetent as a matter of law to testify as a witness when the person has been declared incompetent under the Mental Hygiene Law (*see Brown*, 36 NY2d at 188); has been adjudicated not responsible by reason of mental disease or defect (*see Rensing*, 14 NY2d at 213); or has received an "excessive" fee to testify (*see Caldwell v Cablevision Sys. Corp.*, 20 NY3d 365 [2013]). On the other hand, a person is incompetent as a matter of law to testify to matters that the witness recalled after being hypnotized (*People v Hughes*, 59 NY2d 523, 545 [1983]); and a judge is not competent to testify at a proceeding over which the judge is presiding (*People v Dohring*, 59 NY 374 [1874]).

As to the issue of a witness's competency generally, the Court of Appeals stated in *Brown* that a person is competent to be a witness, if the person

> "has the ability to observe, recall and narrate, i.e., events that he sees must be impressed in his mind; they must be retained in his memory; and he must be able to recount them with sufficient ability such that

> the presiding official is satisfied that the witness understands the nature of the questions put to him and can respond accordingly, and that he understands his moral responsibility to speak the truth."

(*Brown*, 36 NY2d at 189.)

When a person's ability to perceive, recall, narrate or understand the nature of an oath is challenged, the Court of Appeals has charged the court with the responsibility of determining whether the person "has sufficient intelligence to understand the nature of an oath and to give a reasonably accurate account of what he has seen and heard vis-à-vis the subject matter about which he is interrogated." (*Rensing*, 14 NY2d at 213.) When the court is so satisfied, the person may testify. (*Brown*, 36 NY2d at 189.) In making that determination, the court may properly consider the testimony of physicians or other persons with information that would shed light on the capacity and intelligence of the prospective witness. (*Parks*, 41 NY2d at 46.) As the Court stated in *People v Washor* (196 NY 104, 109-110 [1909]): "There is no rule by which the extent of the intelligence of an adult who is called as a witness can be measured. It must necessarily be left to the good judgment of the trial court to determine whether such a witness offered by a party to an action shall be sworn. The determination of the trial court should be sustained particularly where the testimony is received and the weight to be given to it is left to the jury, unless there is a clear abuse of discretionary power."

Deficiencies in a witness's testimonial qualities that are not of such a nature to render the witness incompetent to testify may be admissible for impeachment purposes. (*See e.g. People v Freeland*, 36 NY2d 518, 525-526 [1975]; *People v Webster*, 139 NY 73, 87 [1893].) The witness may be questioned about such deficiencies on cross-examination, and, as such deficiencies are considered to be non-collateral matters, extrinsic evidence is admissible to establish them. (*See e.g. Badr v Hogan*, 75 NY2d 629, 634 [1990]; *Freeland*, 36 NY2d at 526.)

Statutory provisions rendering a person incompetent to testify as a witness or as to certain matters include CPL 60.20 (2) ("Every witness more than nine years old may testify only under oath unless the court is satisfied that such witness cannot, as a result of mental disease or defect, understand the nature of an oath. A witness less than nine years old may not testify under oath unless the court is satisfied that he or she understands the nature of an oath"), incorporated in Guide to New York Evidence rule 6.05; CPLR 4502 (a) ("A husband or wife is not competent to testify against the other in an action founded upon adultery, except to prove the marriage, disprove the adultery, or disprove a defense after evidence has been introduced tending to prove such defense"); and CPLR 4519 (historically known as the dead man's statute) which, in substance, provides that a person or party interested in the event, or a predecessor in interest, is incompetent to testify to a personal transaction or communication with a deceased or a mentally ill person when such testimony is offered against the representative of the deceased or mentally ill person.