

## **6.07. Nonexpert Witness Limited to Personal Knowledge Testimony**

**Except for an expert witness giving an expert opinion, a witness may testify to a matter only if the witness has personal knowledge of the matter. Personal knowledge is knowledge based on the exercise of the witness's own senses. Evidence of a witness's personal knowledge may be apparent from the testimony of the witness or may be attested to by the witness.**

### **Note**

This rule sets forth New York's well settled law that a witness is incompetent to testify to a specific matter when the witness lacks personal knowledge of the matter. The definition of personal knowledge stated in the rule's second sentence is drawn from *Hallenbeck v Vogt* (9 AD2d 836 [3d Dept 1959]).

The rule's first sentence is derived from decisions of the Court of Appeals and the Appellate Divisions and states a fundamental proposition of the law of evidence (e.g. *People v Regina*, 19 NY2d 65, 68-70 [1966] [witness's testimony that he saw perpetrators during a five second time period fire two shots properly admitted]; *Senecal v Drollette*, 304 NY 446, 448-449 [1952] [witness's testimony as to the make of the car that struck him should have been admitted as the witness said he "got a glance at it just before it hit him"]; *Matter of Rios v Selsky*, 32 AD3d 632, 633 [3d Dept 2006] [hearing officer properly denied request of respondent to call certain witnesses as the witnesses had no personal knowledge of the incident]; *Overseas Trust Bank v Poon*, 181 AD2d 762, 763 [2d Dept 1992] [testimony of husband concerning wife's overseas trips during a relevant time period properly excluded as it was "clear" the husband lacked personal knowledge]).

The trial court is charged with making the determination of whether the witness has personal knowledge. In essence, this rule of personal knowledge is an application of Guide to New York Evidence rules 4.01 (Relevant Evidence) and 4.05 (Conditional Relevance).

The rule's third sentence is derived from *Regina* (19 NY2d at 68-70) and *Senecal* (304 NY at 448-449).

The expert witness exception is derived from *Cassano v Hagstrom* (5 NY2d 643, 646 [1959] [expert opinion may be based on the expert’s personal knowledge or upon facts in evidence made known to the expert]) and *Hambusch v New York City Tr. Auth.* (63 NY2d 723, 726 [1984] [expert opinion can be based in part on inadmissible evidence if it is “of a kind accepted in the profession as reliable in forming a professional opinion” and the evidence is established to be reliable]).

It must also be noted that the rule’s requirement of personal knowledge does not prohibit a witness from testifying to an out-of-court statement that is not barred by the hearsay rules set forth in article 8 of this Guide, provided the witness heard or read the statement. In such circumstances, the witness has the requisite personal knowledge of the “matter,” i.e., the out-of-court statement.