STATE OF NEW YORK

7043

2023-2024 Regular Sessions

IN SENATE

May 17, 2023

Introduced by Sen. HOYLMAN-SIGAL -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to the use of writings and objects to refresh recollection

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The civil practice law and rules is amended by adding a new section 4550 to read as follows:

§ 4550. Writings and objects used to refresh recollection. (a) While testifying. Except as otherwise provided by law in criminal proceedings, if a witness while testifying at a trial, hearing, or deposition uses a writing, an object, or other material to refresh the witness' recollection for the purpose of testifying at the trial, hearing, or deposition, an adverse party is entitled to inspect the writing, object, or other material at that time. The disclosure shall not be barred by any common law or statutory privilege, work product protection under subdivision (c) of section thirty-one hundred one of this chapter, or trial preparation protection under subparagraph two of subdivision (d) of section thirty-one hundred one of this chapter otherwise applicable to the writing, object, or other material.

(b) Before testifying. If before testifying at a trial, hearing, or deposition a witness has used a writing, an object, or other material to refresh the witness' recollection, and the court in its discretion determines the interests of justice so require, an adverse party is entitled to production of the writing, object, or other material at the trial, hearing, or deposition where the witness is testifying or as soon afterward as practicable. Among the factors to be considered in determining whether production is to be ordered are the importance of the witness' testimony, the extent to which the witness' testimony overlaps with the contents of the writing, object, or other material used, the amount of time elapsed between the use of the writing, object, or other

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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material to refresh recollection and the witness' testimony, and the need of the party seeking production to test the witness' credibility. The privileged or protected nature of the material sought to be produced shall not bar production, but the court may consider any applicable privilege or protection as a factor in that determination.

(c) Terms of production and use. When the adverse party is entitled to production of the writing, object, or other material under subdivision (a) or (b) of this section, the adverse party may use the disclosure to cross-examine the witness about it and, only for the purpose of impeaching the witness, may introduce in evidence portions that relate to the witness' testimony. If the party resisting production claims the writing, object, or other material includes matter unrelated to the witness' testimony, the court shall examine the writing, object, or other material in camera and excise any unrelated matter. If the writing, object, or other material is not produced as ordered, the court may issue any further order the interests of justice require.

§ 2. This act shall take effect immediately.