

**Rule 15-45. SDCL 19-19-612. Writing used to refresh a witness's memory.**

**(a) Scope.** This section gives an adverse party certain options when a witness uses a writing to refresh memory:

- (1)** while testifying; or
- (2)** before testifying, if the court decides that justice

requires the party to have those options.

**(b) Adverse party's options; deleting unrelated matter.**

An adverse party entitled to have the writing produced at the hearing under subdivision (a) is entitled to inspect it, to cross-examine the witness about it, and to introduce in evidence any portion that relates to the witness's testimony. If the producing party claims that the writing includes unrelated matter, the court must examine the writing in camera, delete any unrelated portion, and order that the rest be delivered to the adverse party. Any portion deleted over objection must be preserved for the record.

**(c) Failure to produce or deliver the writing.** If a writing is not produced or is not delivered as ordered under subdivision (a) or (b), the court may issue any appropriate order. But if the prosecution does not comply in a criminal case, the court must strike the witness's testimony or — if justice so requires — declare a mistrial.