



Effective Uses of Memoranda of Law

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Why should you file a memo?

▶ PRESERVATION OF THE ISSUES

- ▶ “It is well-settled in Florida that ‘[t]o be preserved for appeal, the specific legal ground upon which a claim is based must be raised at trial and a claim different than that will not be heard on appeal.’” *Chamberlain v. State*, 881 So. 2d 1087 (Fla. 2004).

▶ STANDARD OF REVIEW

- ▶ Abuse of discretion – important to win in the trial court to improve your chances on appeal

Tips for Making Your Memo Effective

- ▶ Strong introduction
- ▶ Use your facts to tell a story
- ▶ Soften the blow of bad facts
- ▶ Avoid “attack” words
- ▶ Be clear and succinct
- ▶ Apply your facts to the law

Unpersuasive Use of Case Law

Cases with Similar Issues

Tallahassee Mem'l Reg'l Med. Ctr. v. Mitchell, 407 So. 2d 601, 602 (Fla. 1st DCA 1981).

There is no error in granting a new trial when improper evidence was admitted on the crucial issue of liability.

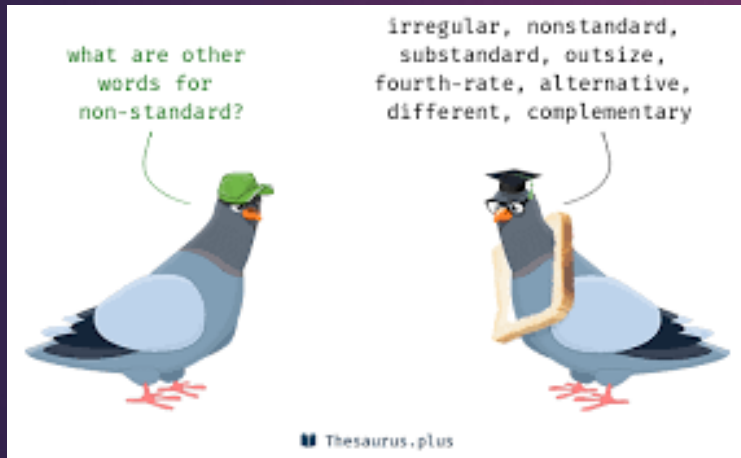
Qualls v. Stancato, 450 So. 2d 1197, 1201 (Fla. 1st DCA 1984) The trial judge acted properly in granting a new trial based upon the conduct of counsel in improperly and repeatedly attempting to elicit inadmissible evidence.

Currie v. Palm Beach Cty., 578 So. 2d 760, 764 (Fla. Dist. Ct. App. 1991) The trial court properly exercised its discretion in granting a new trial when counsel persisted in improper questioning and made comments during closing argument on this same issue which were not supported by the evidence.

Times to Consider Using a Memo

- ▶ **Daubert motions and opposition**
 - ▶ “[W]e review the trial court's ruling on the admissibility of expert testimony under section 90.702 for an abuse of discretion.” *Kemp v. State*, 280 So. 3d 81, 88 (Fla. 4th DCA 2019).
 - ▶ Taking the time to write out a memo ensures you include all possible bases
 - ▶ A memo will not be enough for preservation if the trial court reserves ruling

Non-standard Jury Instructions or Verdict Forms



- ▶ Abuse of discretion standard of review
- ▶ The failure to give a requested instruction constitutes reversible error when the requested instruction is:
 - (1) an accurate statement of the law
 - (2) the facts in the case support such an instruction, and
 - (3) the jury instruction is necessary for the jury to properly resolve the case.

Aubin v. Union Carbide Corp., 177 So. 3d 489 (Fla. 2015).

Jury Instruction Example

Plaintiff's Proposed Instruction No. ____

Florida Statute § 316.183 *UNLAWFUL SPEED* states:

"No person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions, and having regard to the actual and potential hazards, then existing. In every event, speed shall be controlled as may be necessary to avoid colliding with any person, vehicle, or other conveyance or object on or entering the highway in compliance with legal requirements and the duty of all persons to use due care."

Violation of this statute/ordinance is evidence of negligence. It is not, however, conclusive evidence of negligence. If you find that a person alleged to have been negligent violated such a traffic regulation, you may consider that fact, together with the other facts and circumstances, in determining whether such person was negligent.

GIVEN _____

DENIED _____

MODIFIED _____

INSERT MEMO HERE

Directed Verdict and JNOV



Rule 1.480(a) – a motion for directed verdict shall state the specific grounds therefor



Within 15 days of verdict, you can move to set aside the verdict (JNOV) *if* you moved for a DV at the close of the evidence

Renewed Motion for Mistrial

- ▶ *Gonzalez v. Mercy Hosp., Inc.*, 738 So. 2d 955 (Fla. 3d DCA 1999)
 - ▶ Plaintiff raised three oral motions for mistrial during trial
 - ▶ Made a fourth motion at the conclusion of the case that renewed all prior motions (unclear whether oral or written)
 - ▶ The appellate court reversed and found mistrial should have been granted

Motion for New Trial, etc.

- ▶ Do not be hasty – send the right message!
- ▶ Abuse of discretion
 - ▶ “When reviewing the order granting a new trial, an appellate court must recognize the broad discretionary authority of the trial judge and apply the reasonableness test to determine whether the trial judge committed an abuse of discretion. If an appellate court determines that reasonable persons could differ as to the propriety of the action taken by the trial court, there can be no finding of an abuse of discretion.” *Brown v. Estate of Stuckey*, 749 So. 2d 490, 497–98 (Fla. 1999)