

Preserving Error with Motions in Limine

“Winning Your Appeal at Trial” - Florida Bar 2021 Winter Meeting

Outline: Preserving Error with Motions in Limine

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Purpose of Motion in Limine

A motion in limine:

- Any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered.

Purpose:

- Prevent the opponent from tainting the jury.

Forms of Motion in Limine – How?

How?

- Mind local rules, judicial rules

Written Motions

- Time limits (order?)
- Page limits
- Motions – multiple? Single motion?

Oral Motions

Forms of Motion in Limine – When?

Pretrial Conference

- After the Close of Discovery
- Mind whether included in the trial order (if not, suggest it)
- Comply with local rules or judicial procedures (e.g., 9th Jud. Cir. BCP 10.2; judicial limits)

Trial

- Outside the presence of the Jury
- Typically not considered for bench trials

Changes in Section 90.104(1)

(1) A court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and:

(a) When the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of objection if the specific ground was not apparent from the context; or

(b) When the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which the questions were asked.

If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

§ 90.104, Fla. Stat. Ann. (eff. July 1, 2003)

Preserving Error – General Rules

Proper preservation of error for appellate review generally requires three components.

1. Timely, contemporaneous objection at the time of the alleged error.
2. State a legal ground for that objection.
3. In order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground for the objection, exception, or motion below.

Aills v. Boemi, 29 So. 3d 1105, 1108–09 (Fla. 2010)

Preserving Error – General Rules

Second prong (state the specific legal ground). To be preserved for appeal:

1. 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.
2. Appellate review is therefore limited to the specific grounds for objection raised at trial.
3. Except in cases of fundamental error, an appellate court cannot consider any ground for objection not presented to the trial court.

Aills v. Boemi, 29 So. 3d 1105, 1109 (Fla. 2010)

Preserving Error, Post-2003

(1) A court may predicate error, set aside or reverse a judgment, or grant a new trial on the basis of admitted or excluded evidence when a substantial right of the party is adversely affected and:

(a) When the ruling is one admitting evidence, a timely objection or motion to strike appears on the record, stating the specific ground of objection if the specific ground was not apparent from the context; or

(b) When the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer of proof or was apparent from the context within which the questions were asked.

If the court has made a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

§ 90.104, Fla. Stat. Ann.

Renewal of Objection vs. Failure to Object

Movant should nonetheless make a contemporaneous objection, or risk failure to preserve for review.

But see §90.104, Fla. Stat.:

“If the court has made a **definitive ruling** on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.”

Inadvertent Waiver or Acquiescence at Trial

The motion in limine, alone, is not enough!

Inadvertent Waiver or Acquiescence at Trial

[Appellant] had filed a motion in limine prior to trial to prohibit introduction of this evidence, and after argument was presented, the trial court reserved ruling on the motion. That ruling was never made, and there is nothing in the record to suggest that [Appellant] subsequently pressed the trial court for a ruling or objected when the testimony was introduced.

Tolbert v. State, 922 So. 2d 1013, 1016–17 (Fla. 5th DCA 2006)

Inadvertent Waiver or Acquiescence at Trial

You obtained the Order!

Violating an order granting a motion in limine can result in a mistrial or reversible error. Kreitz v. Thomas, 422 So.2d 1051 (Fla. 4th DCA 1982).

Movant should nonetheless make a contemporaneous objection, or risk failure to preserve for review.

Standard of Review

An appellate court reviews a trial court's ruling on a motion in limine for an abuse of discretion.

The trial court's discretion regarding admissibility of evidence is broad and its ruling will be disturbed only upon an abuse of discretion.

Nshaka v. State, 92 So. 3d 843, 847 (Fla. 4th DCA 2012) (cleaned up)

Standard of Review

Failure to Object -> Fundamental Error

Because [Appellant] did not preserve her objections to the school record's admissibility, we review its admission only for fundamental error. **Fundamental error is error that reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.**

Carr v. State, 156 So. 3d 1052, 1062–63 (Fla. 2015) (cleaned up)

Standard of Review

Be aware of pure questions of law:

The question before us is **whether the district court erred** in reversing the trial court's judgment **on a ground that we find from the record was not presented to the trial court and thus not preserved** for appellate review. Because this is a **question of law arising from undisputed facts, the standard of review is de novo**. See Kirton v. Fields, 997 So.2d 349, 352 (Fla.2008); see also D'Angelo v. Fitzmaurice, 863 So.2d 311, 314 (Fla.2003) (stating that the standard of review for pure questions of law is de novo).

Aills v. Boemi, 29 So. 3d 1105, 1108 (Fla. 2010)

Best Practices

Written Motions

- Time to Evaluate the Evidentiary Rules
- Time for Case Law
- Think through exhibits, testimony – Greater yield for overall trial strategy
- Better coverage for record on 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.

Q & A

Thank you.

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