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This handout describes legal research materials available on-line and in print in New York Court Public Access Law Libraries.

The information provided should be considered a starting point in your research and should not be interpreted as a comprehensive review of the subject or issue in question

## What is a trial memorandum?

### 1. Definition

#### Definition

A trial brief is not a sketch of the case but a complete and comprehensive narrative of the pleadings, the admissions and denials, the issues of fact, issues of law, your expected proof in logical order, and your theory of the law of the case with citations of the authorities and short expositions of the applicable cases. Legal propositions should be stated in a simple, positive, and direct manner, and citations of authority used in support of the propositions should be few and on point. The trial memorandum is meant to convince the court that the picture of the case painted in it is the true and correct one, and this image is seriously damaged, if not destroyed, when the judge takes the trouble to read a cited authority and finds that it does not support the legal proposition for which it has been cited

7B Carmody-Wait 2d § 46:10

### 2. Court Rules governing in court

- a. There are court rules requiring submission of trial memoranda, but there is little guidance as to how prepare such a filing.
  - i. 22 NYCRR 202.35
  - ii. 22 NYCRR 210.27
  - iii. 22 NYCRR 212.27

### 3. Stage of Litigation

- a. Brief Discussions

- i. Carmody Wait 2d, Ch 46 The Preparation and Trial of A Civil Case (WestlawNext)
- ii. Carmody-Wait 2d, Ch 56 Presentation of Case, § 56:2. Trial memoranda and copies of statutes is only three brief paragraphs with no samples or checklists WestlawNext
- iii. LexisNexis Answer Guide: New York Civil Litigation, Ch 9 Trial, Part B. Submitting Pretrial Memorandum of Law, Marked Pleadings, and Other papers to Court. No samples, no checklists.
- iv. New York Civil Practice Before Trial, Ch 15 Pleadings (E-Books)
- v. New York Trial Manual -E-book James publication § 16:113 Gives court rules requiring memoranda, but provides little guidance. Even adds to confusion but stating there are pretrial and post trial memoranda.
- vi. New York Practice Series: Commercial Litigation in New York State Courts § 40:4 Pretrial memoranda (Westlaw)
- vii. West's McKinney's Forms Civil Practice Law and Rules § 1:2 The Stages of a Civil Lawsuit (Westlaw)

#### 4. Writing guidance

##### a. In-depth Explanation

- i. 5 Am Jur Trials 89 The Trial Brief [alternate term for trial memorandum] WestlawNext
- ii. Art of Advocacy: Preparation of the Case § 11.82 Trial Briefs (LexisAdvance)
- iii. 7B Carmody-Wait 2d § 46:10 Prepare trial brief has a table of contents for a trial brief. This is an excellent starting point. (Westlaw)
- iv. Gerald Levovits, *You Think You Have Issues? The Art of Framing Issues in Legal Writing – Part 1*, 78 NY State BJ 64 (May 2006). WestlawNext
- v. --, -- *Part 2*, 78 NY State BJ 64 (June 2006) WestlawNext
- vi. Michael A. Rosenhouse, New York Pattern Jury Instructions Companion Handbook (West Publishing, available in hardcopy only)
- vii. [Susan Wolfe, How I Learned to Stop Worrying and Love the Brief by Susan Wolfe, NYLJ 8/22/16.](#)

#### 5. Examples of Trial Briefs

- a. Practice materials for a specific topic may provide sample memoranda, but it will require research. And digging.
  - i. Adoption Law and Practice § 8.09 Preparation of Post-trial Memorandum of Law LexisAdvance
  - ii. Art of Advocacy LexisAdvance
    - 1. It is always helpful to present a written trial brief to the judge in support of your legal position. It can be prepared in advance on areas that you recognize will be potentially troublesome. If you are fearful of alerting the opposition to all of the legal points that could arise, prepare separate briefs on each subject, to be submitted individually. This has the added advantage of unnerving your adversary, if you are able to

quickly produce authoritative written support for your position, and he has not prepared anything in advance. He must now either forego producing a well-researched, well-written memorandum, or he must take crucial time out in the middle of trial to prepare a response. You must do considerable legal research the first few times around, but thereafter the same subjects will recur. The law changes slowly in most areas, so it is usually not necessary to completely rewrite your trial brief each time you have a case involving a similar point. The original brief can simply be updated. Eventually you will develop a library of briefs covering points that arise in your field of litigation. Once you have a stock of trial briefs they can be kept current and pulled and adapted for a pending trial with a minimum of research

1-11 Art of Advocacy: Preparation of the Case § 11.82 (2015)

- iii. Law and the Family Forms. Available in hardcopy only. Not included in the Westlaw subscription
- iv. New York Driving While Intoxicated Defense Forms (Westlaw)
- v. NY Practice Guide: Domestic Relations LexisAdvance
  - 1. § 16:16 Sample Pre-Trial Memorandum
  - 2. § 16:17 Sample trial Memorandum
  - 3. § 16:19 Sample Post-Trial Memorandum
- vi. New York Practice Series: New York Elements of an Action (Westlaw)
- vii. New York Practice Series: Personal Injury Practice in New York, Ch 8 Trial Brief § 8:144-153 (Westlaw)

## 6. Legal Writing Bibliography

Aldisert, Ruggero J., Meehan Rasch, and Matthew P. Barlett, "Opinion writing and opinion readers," *Cardozo Law Rev* 1-43 (Sept 2009).

Bryan A. Garner, *The Deep Issue: A New Approach to Framing Legal Questions*, 5 *Scribes J Legal Writing* 1 [1995]

Bryan A. Garner, *Pointed advice on point headings; good headings show you've thought out your arguments well in advance, and they help make your case*, 101:9 *ABA Jnl* 24 (2015)

Almas Khan, *A Compendium of Legal Writing Sources*, 50 *Washburn LJ* 395 [2011]

Lebovits, Gerald, *Advanced Judicial Opinion Writing: A Handbook for New York State Trial and Appellate Courts* (7.4 ed. 2004) (December 1, 2004) Available at SSRN: <https://ssrn.com/abstract=1406709>

Ruth C. Vance, *Judicial Opinion Writing: An Annotated Bibliography*, 17 *Legal Writing: J Legal Writing Inst* 197 [2011]

***Important Disclosures:***

## Legal Advice

NY State Court System staff are pleased to provide you with basic legal information of relevance to New York State courts, caselaw, statutory and regulatory materials from standard legal reference sources. Our court employees, however, may not provide legal advice, interpret the law or assist with the processing of specific motions or cases.

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