

Before the close of evidence in a federal negligence trial, the defendant submitted a proposed jury instruction on contributory negligence. Before instructing the jury, the judge informed the parties of the instructions she would give, which did not include the defendant's proposed contributory-negligence instruction but did include the court's own instruction on contributory negligence. Neither party objected, either then or after the judge had given the instructions. The jury returned a verdict for the plaintiff, and the judge entered judgment on the verdict.

The defendant would like to appeal the verdict on the ground that the judge should have instructed the jury using the defendant's proposed instruction on contributory negligence.

Has the defendant preserved the issue for appeal?

- A. No, because the defendant failed to object after the judge gave the instructions to the jury.
- B. No, because the defendant failed to object after the judge informed the parties of the instructions she would give.
- C. Yes, because the defendant submitted a proposed instruction on contributory negligence.
- D. Yes, because the judge's failure to give the defendant's contributory-negligence instruction amounted to a ruling on the instruction.

Explanation:

To **challenge a jury instruction** on appeal (ie, to preserve error), a party must raise the issue at trial. This can be done at the **close of evidence** (or otherwise at the court's direction) by:

- filing a **written request** for the jury instruction that the party would like the court to give *and*
- **obtaining a definitive ruling** on that request from the court **on the record**.

This can also be done after the court has informed the parties of its proposed instructions (but before it has instructed the jury and before final arguments) by clearly identifying the matter objected to, and the grounds for the objection, on the record.

Here, the defendant proposed a jury instruction on contributory negligence before the close of evidence. But the defendant never obtained a *definitive* ruling on that proposal from the court on the record (eg, "Your request is denied"). Instead, the judge merely informed the parties of the instructions she would give, which did not include the defendant's proposed instruction (**Choice D**). And since the defendant failed to object *before* the judge instructed the jury, this issue was not preserved for appeal (**Choice A**).

(Choice C) Submitting a proposed jury instruction only preserves the issue for appeal when the court definitively rules on that request on the record—which the court failed to do here.

Educational objective:

A jury-instruction error is preserved for appeal when a party raises the issue (1) at the close of evidence by filing a written request for the proposed instruction and obtaining a definitive court ruling on the record OR (2) before the court instructs the jury by clearly identifying, and stating the grounds for, the objection on the record.

References

- Fed. R. Civ. P. 51 (preserving error regarding requests for, and objections to, jury instructions).

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Preserving error in jury instructions

