

An employee brought a federal diversity action against her former employer for negligence. Before the close of evidence, the parties submitted proposed jury instructions. Prior to the parties' closing arguments, the judge informed the parties of the instructions she would give, provided them an opportunity to object, and instructed the jury.

During the employer's closing argument, the employee repeatedly yelled out, "That's a lie!" After several warnings, the judge ordered the bailiff to remove the employee from the courtroom. At the conclusion of the employer's closing argument, the employer has requested that the judge instruct the jury to disregard the employee's outbursts.

What argument has the best chance of persuading the court to give this jury instruction?

- A. The employee's conduct was plain error that affected the employer's substantial rights.
- B. The employer could not have reasonably anticipated this issue by the close of evidence.
- C. The judge did not set a deadline for jury-instruction requests.
- D. The parties may request jury instructions at any time before the jury is discharged.

## Explanation:

### Jury instructions

(FRCP 51)

#### Requests      Party:

- must file request by close of evidence unless earlier, reasonable deadline set by court
- may file request after close of evidence when:
  - request relates to issue that party could not have reasonably anticipated by deadline *or*
  - court permits late submission related to any issue

#### Instructions      Court:

- must inform parties of proposed instructions before instructing jury & closing arguments
- must allow parties to object on record & outside jury's presence before instructing jury & closing arguments
- may consider objection made after court instructs jury if instruction constituted plain error
- may instruct jury at any time before discharge

#### Objections      Party:

- must distinctly state objection & its grounds on record
- must object at court-appointed time or promptly after learning of proposed instruction

**FRCP** = Federal Rule of Civil Procedure.

**Jury instructions** advise jurors on their deliberation procedures and the applicable law. These instructions can be formulated by the court or the parties. FRCP 51 allows each party to **request** specific jury instructions **before or at the close of evidence** unless the court sets an earlier, reasonable deadline.\* Additionally, a request may be **filed after the close of evidence** if:

- the request relates to an **issue** that the party could **not have reasonably anticipated** by the deadline *or*
- the **court permits** a late submission that relates to any issue.

Here, the employer requested *after* the close of evidence that the judge instruct the jury to disregard the employee's outbursts during the employer's closing argument. As a result,

the employer's best argument to persuade the court to give this instruction is that the employer could not have reasonably anticipated this issue by the close of evidence.

\*To request a jury instruction, a party generally must file a written request with the court and furnish it to every other party. Some courts allow verbal requests, but they are highly disfavored.

**(Choice A)** When a party fails to preserve an error by objecting at trial, the error can only be reviewed via posttrial relief or appeal if it is a plain error. However, the employer is not seeking posttrial relief or an appeal, so this is not the best argument.

**(Choice C)** When a trial judge does not set a deadline for jury-instruction requests, the default deadline is the close of evidence. Since that deadline has already passed, this argument is unlikely to persuade the court.

**(Choice D)** The *court* may instruct the jury at any time before the jury is discharged—ie, released from its duties in the case. However, the parties must file their requests for jury instructions before or at the close of evidence unless an exception applies (as seen here).

**Educational objective:**

A party may request specific jury instructions after the close of evidence when (1) the instruction relates to an issue that could not have been reasonably anticipated by the deadline or (2) the court grants permission.

**References**

- Fed. R. Civ. P. 51(a) (jury-instruction requests).