

A worker was injured when a machine he was using on the job malfunctioned. The worker brought a federal diversity action against both the machine's manufacturer and the company responsible for the machine's maintenance. At trial, the worker submitted a proposed jury instruction on negligence. The court did not accept the proposed instruction and instead gave a negligence instruction that the worker's attorney believed was less favorable and legally incorrect. The attorney did not object to the negligence instruction before it was given. The jury returned a verdict for the defendants.

The worker has moved for a new trial on the ground that the court's negligence instruction was improper.

What argument has the best chance of persuading the court to grant the motion?

- A. Issues of law can be raised at any time.
- B. The court's negligence instruction was incorrect and the worker's objection to it was preserved when he submitted his proposed negligence instruction.
- C. The court's negligence instruction was plain error that affected the worker's substantial rights.
- D. The need for a formal objection to a judicial ruling in order to preserve an argument has been eliminated in the Federal Rules of Civil Procedure.

Explanation:

A party must generally raise a **formal objection at trial** to preserve and challenge an error in a post-trial motion (eg, motion for new trial) or on appeal. An error in the jury instructions is **preserved** if the objection was raised either:

- at the close of evidence – by filing a written request for a proposed instruction and obtaining a definitive ruling from the court on the record *or*
- before the court instructed the jury and before closing arguments – by clearly identifying, and stating the grounds for, the objection on the record.

If a party **failed to do so**, the challenged error can only be **reviewed for plain error (Choice D)**. Under a plain error review, a motion for new trial will be granted if the movant shows that an **obvious error affected a substantial right** and the fairness of judicial proceedings—eg, a jury instruction that misstated the law.

Here, the worker submitted a proposed jury instruction on negligence. That proposal was not accepted by the court, but it was not definitively denied on the record (no preserved error) **(Choice B)**. And though the worker's attorney disagreed with the court's instruction, the attorney did not object to it on the record (no preserved error). But since the attorney believed that the court's instruction was legally incorrect, the best argument to support the motion for new trial is that the instruction was plain error that affected the worker's substantial rights.

(Choice A) Most issues—including [issues of law](#)—must be raised at trial before they can be raised post-trial (eg, improper jury instruction). Only certain issues can be raised at any time (eg, lack of subject-matter jurisdiction or standing).

Educational objective:

A party must generally raise a formal objection at trial to preserve his/her right to challenge an error in a post-trial motion or on appeal. But if a party fails to do so, the challenged error can still be reviewed for plain error—ie, an obvious error that affected a substantial right and the fairness of judicial proceedings.

References

- Fed. R. Civ. P. 51 (preserving error regarding requests for, and objections to, jury instructions).
- Fed. R. Civ. P. 59, 61 (motion and standard for new trial).

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Motion for new trial
(based on jury-instruction error)

