

After being forcibly ejected from a casino, a tourist brought a federal diversity action against the casino, seeking \$105,000 in damages. The tourist claimed that the casino's security guard had used excessive force when ejecting him from the casino, causing severe personal injuries.

At trial, the tourist's attorney attempted to introduce testimony of the security guard's ex-wife, who had filed several complaints of spousal abuse against the security guard. The casino's attorney objected that the evidence was irrelevant and unfairly prejudicial. The court overruled the objection, and the ex-wife testified. The jury returned a verdict for the tourist, awarding him \$82,000 in damages.

The casino's attorney believes that the ex-wife's testimony was unfairly prejudicial and should not have been admitted.

What is the best way for the casino's attorney to attack the verdict?

- A. Appeal, arguing that the trial court erred in admitting the testimony, which was so prejudicial that the judgment should be reversed.
- B. Move for a new trial, arguing that the court erred in admitting the testimony and that a new trial without the testimony is necessary.
- C. Move for judgment as a matter of law, arguing that the court erred in admitting the testimony and that without the testimony, the evidence was legally insufficient to find for the tourist.
- D. Move for relief from judgment, arguing that the court's admission of the testimony was a mistake.

Explanation:

Grounds for new trial

- Prejudicial trial error (eg, erroneous evidentiary ruling)
- Prejudicial misconduct by judge, attorney, party, or juror
- Verdict not supported by clear weight of evidence
- Verdict based on false/nonexistent evidence
- Excessive or inadequate damages
- Newly discovered evidence

Within 28 days after entry of a final judgment, a party can **move for a new trial** on several grounds (see above image)—including that a **prejudicial trial error** occurred because the court **erroneously admitted evidence**. Here, the casino's attorney believes that the testimony by the security guard's ex-wife was unfairly prejudicial and should have been excluded. Therefore, the best way to attack the jury's verdict is to move for a new trial, arguing that the court erred in admitting the testimony and that a new trial without the testimony is necessary.

(Choice A) A party may appeal to the [federal appellate court](#) encompassing the federal district court that issued an adverse finding, conclusion, or ruling (eg, erroneously admitted evidence). But since the appellate process is time-consuming and expensive, the most immediate way to obtain the desired relief is to move for a new trial.

(Choice C) A judgment as a matter of law (JMOL) is a judgment entered in favor of the movant because the evidence is legally insufficient for a reasonable jury to find in the nonmovant's favor. However, once the jury has returned its verdict, a party can only move for a [renewed JMOL](#) if that party had moved for JMOL before the case was submitted to the jury (not seen here).

(Choice D) A party may move for [relief from a final judgment](#) in limited circumstances, including when the judgment was due to a mistake by the parties or the court. Judicial mistakes that qualify for such relief include mistakes in the entry of judgment, but not in admitting evidence. Therefore, this is not the best way to attack the verdict.

Educational objective:

A motion for a new trial can be made on several grounds, including that a prejudicial trial error occurred because the trial court erroneously admitted evidence that should have been excluded.

References

- Fed. R. Civ. P. 59 (motion for a new trial).

- 11 Charles Alan Wright et al., Federal Practice and Procedure § 2805 (4th ed. 2020) (explaining the grounds to move for a new trial).

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