

A plaintiff sued a defendant in federal court for trademark infringement. At the conclusion of trial, the judge instructed the 10-member jury. In the jury deliberation room, one of the jurors pulled out his cell phone and searched for "trademark infringement." He read aloud from an article that said, "trademark infringement hurts the U.S. economy." The jury foreman directed the juror to stop reading and sent a note to the judge describing the incident.

The judge brought the jury back to the courtroom and reminded the members of their obligation not to consult outside sources during deliberations. She confiscated their phones, instructed them to ignore the juror's misconduct, and directed them to continue deliberating. The jury returned to the deliberation room. After three hours, the jury returned a verdict in favor of the defendant. The court entered a final judgment consistent with the verdict.

The plaintiff moved for a new trial based on the juror's conduct 21 days after the entry of the final judgment.

How will the judge likely rule on the plaintiff's motion?

- A. Deny the motion, because the juror's misconduct was harmless.
- B. Deny the motion, because the plaintiff waived its right to challenge the juror's conduct by filing an untimely motion for new trial.
- C. Grant the motion, because the judge should have removed the juror from the jury.
- D. Grant the motion, because the juror engaged in misconduct by consulting outside information.

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

A court can grant a **new trial** if a juror (or judge, party, or attorney) engaged in **prejudicial misconduct** during the trial. Misconduct is prejudicial when it **affects a party's substantial rights**. This requires the court to determine with fair assurance whether the jury's verdict was influenced by the misconduct. If there was **no improper influence**, then the misconduct was **harmless** and does not provide a basis for a new trial. For example, misconduct can be made harmless (ie, "cured") if the judge admonishes the jury to disregard that conduct.

Here, a juror read aloud from an article that "trademark infringement hurts the U.S. economy." This misconduct may have initially prejudiced the defendant who had allegedly engaged in trademark infringement. But it did not prejudice the plaintiff because the statement *supported* the plaintiff as the holder of the trademark.* Therefore, the court will likely find that the misconduct was harmless and deny the plaintiff's motion for a new trial **(Choice D)**.

*Even if this misconduct had prejudiced the plaintiff, the prejudice was likely cured when the judge confiscated the jurors' phones, instructed them to ignore the juror's misconduct, and directed them to continue deliberating.

(Choice B) A party must file a motion for a new trial within 28 days after the entry of a final judgment. Therefore, the plaintiff's motion for new trial—filed 21 days after the court entered the final judgment—was timely.

(Choice C) A juror *may* be removed during trial if the juror can no longer capably serve on the jury (eg, due to medical issues) or if the juror engaged in misconduct (as seen here). However, the judge has considerable discretion to decide whether removal is warranted.

Educational objective:

A new trial is warranted when a juror engaged in prejudicial misconduct—ie, misconduct that affects a party's substantial rights by influencing the jury's verdict. If misconduct is *not* prejudicial, then it is merely harmless error that does not warrant a new trial.

References

- Fed. R. Civ. P. 61 (harmless error).
- 58 Am. Jur. 2d New Trial § 143 (2019) (explaining that a juror's misconduct must be prejudicial to warrant a new trial).

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