

The Key to Jury Instruction Preservation: Objecting with Precision and Completeness

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In *Byrd v. Stubbs*, 190 So. 3d 26 (Miss. Ct. App. 2016), the Mississippi Court of Appeals reminded us of the need to be diligent during a charge conference by raising specific objections to a proposed jury instruction, as opposed to a general objection. In *Byrd*, the plaintiff in a medical negligence case objected to a proposed superseding cause instruction on the grounds that the instruction was not supported by the evidence. It was not until her motion for new trial – after the verdict was rendered – that the plaintiff asserted that the proposed

instruction was a misstatement of law. This is a fundamental preservation principle that cannot be disregarded. While, in some circumstances, a party may cure its lack of objection at trial through a post-trial motion, that generally is not the case with jury instructions. The specific objection must be made at trial before the instructions are read to the jury; a general objection will not suffice. On an interesting side note, the Mississippi court stated that there are only two distinct types of objections that a party can make to a proposed jury instruction: (1) that it is not warranted by the evidence; or (2) that it misstates the law. These broad categories may be misleading to a practitioner seeking to make a specific objection at trial. It often is not enough to simply say that a proposed instruction is not supported by the evidence or that it misstates the law. Instead, the specific reasons the objection falls into one of these broad categories must be given. Examples of such specific objections include:

- The proposed instruction inappropriately comments on the evidence.
- The proposed instruction ignores a party's theory of the case.
- The proposed instruction improperly deviates from the jurisdiction's standard instruction.
- The proposed instruction contradicts or conflicts with other instructions or conflicts with the verdict form.

Preservation Issue

- All objections to proposed jury instructions must specifically raise the reason for the objection; a general objection will not suffice.
- In some jurisdictions, you may need to provide the court with an alternative proposed instruction that you believe is legally correct.

Tips Given the time constraints and stresses of trial, trial lawyers often disregard the critical importance of the instructions given to the jury by not paying enough attention to the instructions or by making generalized objections to instructions. Practitioners should take the time to prepare their instructions before trial so they can adequately determine how to present their case. This also ensures that the instructions and their corresponding legal issues have been adequately analyzed, allowing trial counsel to have specific objections at the ready during the charge conference to adequately preserve their record for appeal.

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