

Taking Charge: Making Specific and Timely Objections to Jury Instructions

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What do you get when you mix a severed finger, a persnickety trial judge, and a global denial of objections to jury charges? Yet another reminder to make [timely](#) and [specific](#) objections to jury instructions, even when doing so may annoy the trial judge. In [EYM Diner L.P. D/B/A Denny's v. Yousef](#), 5-19-00636-CV, 2020 WL 6883171, at *1 (Tex. App. Nov. 24, 2020), an HVAC technician's finger was partially severed when, while repairing an air conditioning unit at a restaurant, the cover panel of a breaker box fell on it. He sued his employer and the restaurant for damages. The parties each filed proposed jury charges as part of their required pretrial filings. The trial judge, known to run an exceptionally tight ship in the courtroom, then held what could nominally be called a charge conference, during which he told the parties that he would be using his own jury charge. The judge advised counsel that to the extent the parties had any objections to the language included in or omitted from his charge, those objections were overruled. When the judge then asked if the parties had any other objections to the charge, both defendants answered "no." Neither defendant made any specific objections to the charges, nor did they state the legal bases for any such objections on the record. Subsequently, the jury found for the plaintiff, and the defendants appealed. In the Court of Appeals of Texas, the defendants argued, among other things, that the jury charge should have included questions, instructions, and definitions from their proposed charges. The plaintiff responded that defendants had waived those arguments. How could that be? After all, defense counsel had submitted the required proposed charges, which differed from the charge used by the trial court, and the trial judge had overruled any objections to the language, or lack thereof, in his charge. It was true that after receiving the court's jury instructions, defense counsel did not specifically object to the parts of it with which they disagreed; but, that was because counsel was concerned that any further objections would have been "superfluous" and "would have angered" or "displeased" the trial judge. This fear was confirmed when, at the hearing on post-trial motions, the judge explained that had defense counsel made further objections, they would have been taking an "untenable, [] hazardous position of arguing with me after I've made a ruling ..." Nevertheless, the appellate court agreed with the plaintiff, holding that defendants had waived any complaints about

the jury instructions. Texas' procedural rules require that a party submit specific jury charge objections, and the legal bases for those objections, "*after* the charge is given to the parties or their attorneys for examination." The defendants "pretrial proposed charges, standing alone, did not apprise the trial judge of the purported problems with and errors in the court's charge that" defendants asserted on appeal. In short, the trial court's "global denial of objections and requests based solely on the parties' pretrial submission of proposed jury charges [did] not preserve issues of charge error for appellate review." Even though the appellate court "sympathize[d] and vehemently disagree[d] with the predicament the trial judge placed trial counsel in," it made clear that "fear of ridicule or reprimand by a trial judge should not stand in the way of protecting the appellate rights of one's client." The panel further instructed that "there are various ways to preserve error within the confines of a tightly run courtroom" including "asking the trial judge for a few minutes on the record to make formal objections and requests and obtain rulings regarding specific issues with the charge, or filing written objections and requests and obtaining written rulings or rulings on the record."

Tip:

- As always, know your jurisdiction's rules and be prepared to apply them.
- It is critical that you make specific objections to the jury instructions to ensure the trial court has had the opportunity to address them in a timely fashion. [General objections will not suffice.](#)
- It also is critical that you make your objections at the correct time, and that [you make new objections if the instructions change or are modified without curing your objections.](#)
- Filing written objections to jury instructions is always desirable.
- Be prepared to remind the judge you have to comply with the requirements of the law to preserve issues for appeal and that you intend no disrespect to his or her ruling when you do that.

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