

Rule 52. Harmless and Plain Error

(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded.

(b) Plain Error. A plain error that affects substantial rights may be considered even though it was not brought to the court's attention.

COMMENT TO 2016 AMENDMENTS

This rule is identical to the federal rule.

Federal Rule 52(b) was amended in 2002 by deleting the words "or defect" after the words "plain error." The change was intended to remove any ambiguity in the rule. As noted by the Supreme Court, in reference to the former federal rule, the language "plain error or defect" was misleading to the extent that it might be read to create two separate categories: "plain errors" and "defects affecting substantial rights." See *United States v. Olano*, 507 U.S. 725, 732 (1993) (incorrect to read Rule 52(b) in the disjunctive); *United States v. Young*, 470 U.S. 1, 14 n. 12 (1985) (use of disjunctive in Rule 52(b) is misleading).