

A plaintiff brought a diversity action against a defendant in federal district court to determine liability in a fatal auto accident. During jury deliberations, a juror brought a highway manual that he had found at the local library into the jury room. The manual listed the skid mark distances created when a vehicle brakes at various speeds. The jurors used the manual's data to analyze the admitted photographic evidence of the skid marks from the accident scene. They determined that the plaintiff must have been traveling at a recklessly high speed, which caused the accident. Based on the data from the highway manual, the jury returned a verdict in favor of the defendant. The judge presiding over the case entered a final judgment consistent with that verdict on the same day. The plaintiff made no posttrial motions and did not file a notice of appeal.

Sixty days after the court entered final judgment, one of the jurors went to the presiding judge's chambers and told her about the highway manual. The juror then told the judge that the data from the highway manual was the primary reason why the jury found in favor of the defendant. The judge was concerned about this revelation and asked her clerk to research whether the court could order a new trial. After extensive research, the clerk determined that the judge may not order a new trial sua sponte in the action.

What is the most likely reason the clerk determined that the judge may not order a new trial sua sponte?

- A. A court may not order a new trial sua sponte.
- B. A court may not order a new trial sua sponte unless a party engaged in misconduct.
- C. A court may not order a new trial sua sponte until an appeal from the judgment is filed.
- D. A court may not order a new trial sua sponte when more than 28 days have passed since the entry of final judgment.

Explanation:

Posttrial relief

Relief	Grounds	Timing
Attorney's fees	<ul style="list-style-type: none">• Statute or rule allows recovery	≤ 14 days after entry of final judgment
Judgment as matter of law	<ul style="list-style-type: none">• Evidence legally insufficient to find for nonmovant	≤ 28 days after entry of final judgment
New trial	<ul style="list-style-type: none">• Prejudicial trial error• Prejudicial misconduct by judge, attorney, party, juror• Verdict not supported by clear weight of evidence• Verdict based on false/nonexistent evidence• Excessive or inadequate damages• Newly discovered evidence	
Alter/amend judgment	<ul style="list-style-type: none">• Manifest error of law or fact is basis for judgment• Intervening change in controlling law• Newly discovered evidence	
Correction of mistake	<ul style="list-style-type: none">• Clerical mistake• Mistake arising from oversight or omission	Freely OR with appellate court's leave if docketed
Extraordinary relief	<ul style="list-style-type: none">• Mistake, inadvertence, surprise, excusable neglect• Newly discovered evidence• Fraud, misrepresentation, misconduct by opposing party• Void judgment• Judgment satisfied, released, discharged• Other reason justifying relief	≤ 1 year after entry of final judgment Within reasonable time

A court may **order a new trial** on its own initiative (ie, sua sponte) only under Federal Rule of Civil Procedure (FRCP) 59 **(Choice A)**. A court may do so on any ground that has previously provided a basis for a new trial in federal court. One such ground is when a juror (or a judge, attorney, or party) engaged in **prejudicial misconduct**.

Here, prejudicial misconduct occurred when a juror brought in, and the jury based its verdict on, evidence outside the record—the highway manual. However, FRCP 59 requires that a court's **sua sponte order** (or a party's motion) for a new trial be **filed within 28 days** after entry of the final judgment. Since 60 days have passed since final judgment was entered, this is the most likely reason the judge may not order a new trial sua sponte.

However, a party may still seek relief from final judgment under FRCP 60 if extraordinary circumstances exist and a motion for such relief is made within a reasonable time after the entry of final judgment. Here, the discovery of prejudicial juror misconduct after the deadline for the court to order a new trial had passed would warrant such relief, and the plaintiff may still timely file this motion. Therefore, the plaintiff is not without a remedy.

(Choice B) A court may order a new trial on several grounds—including, but not limited to, when a judge, attorney, party, or juror engaged in prejudicial misconduct.

(Choice C) A court may order a new trial sua sponte before a [notice of appeal](#) is filed so long as the order was filed within 28 days after the entry of final judgment.

Educational objective:

A party may move for a new trial—or a court may order a new trial on its own initiative—within 28 days after the entry of final judgment.

References

- Fed. R. Civ. P. 59 (explaining that a court may order a new trial sua sponte within 28 days after a final judgment is entered).
- *Montgomery Ward & Co. v. Duncan*, 311 U.S. 243, 251 (1940) (articulating grounds for a new trial).