

A plaintiff sued a defendant in a federal district court for breach of contract. After the trial, the jury returned a verdict in favor of the plaintiff and awarded her \$1,000,000. The district court entered a final judgment consistent with the jury's verdict. The defendant then filed a notice of appeal, alleging that the district court abused its discretion by failing to exclude several pieces of evidence during trial. The day after the notice of appeal was filed, the district court discovered that the final judgment listed only a \$1,000 award for the plaintiff. The appellate court has not docketed the appeal of the final judgment.

How is the district court likely to proceed?

- A. Correct the mistake in the judgment on its own initiative.
- B. Instruct the appellate court to correct the mistake in the judgment on appeal.
- C. Provide the parties with notice and an opportunity to be heard before correcting the mistake in the judgment.
- D. Request permission from the appellate court to correct the mistake in the judgment.

Explanation:

Posttrial correction of mistakes

(FRCP 60(a))

Type of mistake	Definition	Time of correction
Clerical	Misstatement of court's intent <ul style="list-style-type: none">Eg, court entered judgment for "\$10,000" instead of "\$100,000"	<ul style="list-style-type: none">Before appeal docketed: on court's own initiative or by motionAfter appeal docketed: with appellate court's leave
Oversight/omission	Exclusion misrepresents court's intent <ul style="list-style-type: none">Eg, judgment failed to include required interest in award	

FRCP = Federal Rule of Civil Procedure.

FRCP 60 allows a district court to **correct a clerical mistake** or a mistake arising from an **oversight or omission** in a judgment, order, or other part of the record. The court may do so **on its own initiative** (ie, sua sponte) or pursuant to a party's motion **before an appeal** from the judgment or order **is docketed**—ie, added to the appellate court's schedule. The **appellate court's leave** (ie, permission) is only required **after the appeal has been docketed**.

Here, a clerical mistake occurred since the jury's verdict awarded the plaintiff \$1,000,000 but the final judgment awarded her only \$1,000. Although the defendant had filed a notice of appeal from the judgment, the appeal has not yet been docketed. Therefore, the district court does not need to obtain the appellate court's permission and likely will correct the mistake on its own initiative **(Choice D)**.

(Choice B) A district court does not have the power to instruct an appellate court how to act. Instead, appellate courts have the power to review the decisions of district courts within their **boundaries** and issue instructions that the district court must follow when a case is remanded.

(Choice C) A district court need not provide the parties with notice or an opportunity to be heard before it corrects a mistake in a judgment before an appeal is docketed. Instead, the court may do so on its own initiative.

Educational objective:

A district court may correct a mistake in a judgment, order, or other part of the record on its own initiative or pursuant to a party's motion before an appeal from the judgment or order is docketed. The district court need only obtain the appellate court's leave to correct the mistake after the appeal has been docketed.

References

- Fed. R. Civ. P. 60(a) (correction of mistake in judgment or order).
- 11 Charles Alan Wright et al., Federal Practice and Procedure § 2856 (3d ed. 2020) (explaining how a court may correct a mistake after an appeal has been taken).

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