Appeal No. 23-CV-0976

DISTRICT OF COLUMBIA COURT OF APPEALS

ASEGEDECH KELECHA

Appellant

v.

SARA MENGHESHA

Appellee

Appeal from the Superior Court of the District of Columbia
(Judge Danya Dayson)

BRIEF OF APPELLANT

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Rule 28(a)(5) Statement

This is an appeal from a final judgment that disposes all parties' claims.

Issues Presented for Review

1. When a juror notifies the Court post-verdict that she did not agree to the announced verdict, thereby indicating that there was not a unanimous verdict, does the affected litigant have the right to require the voir dire of that juror and/or the jury foreperson to establish a potential basis for a Motion for New Trial?

2. Was there sufficient evidence presented at trial to satisfy the clear and convincing standard to establish the requisite malice to support a claim for punitive damages?

3. Did the punitive damage award which was ten times the amount of the compensatory damages award violate the Due Process Clause of the Fourteenth Amendment?

Statement of the Case

Asegedech Kelecha ("Kelecha") owns rental property located at 2013 4th St., N.E., Washington, D.C. In February of 2019 she rented a room to Sara Menghesha ("Menghesha"). Menghesha filed a Complaint on May 7, 2020, and an Amended Complaint on June 10, 2020, alleging that Kelecha wrongfully evicted her from her rented room at the start of the COVID-19 pandemic. [21-24].

The first count of the Amended Complaint alleged that on or about May l, 2020 Kelecha removed all of her belongings from the premises, changed the locks, and failed to provide her with a key to either the premises or to her room in the

premises, thus preventing her from accessing the leased property. Kelecha filed her Answer on July 7, 2020. [25-26].

On February 16, 2022, the Court granted Plaintiffs unopposed motion for summary judgment as to liability on the claim for wrongful eviction on the record. [68-72]. Prior to trial, the parties narrowed the issues further, with Plaintiff dismissing her additional claim for violation of the implied warranty of habitability, and Defendant dismissing her Counterclaim for non-payment of rent.

The Court held a jury trial on December 12-14, 2022 on the issues of compensatory and punitive damages for the claim of wrongful eviction. The trial court instructed the jury at the conclusion of the evidence late in the afternoon on December 13, 2022. [325-330]. Those instructions specified that the jury's verdict was required to be unanimous, and that the jurors were required to consult with each other "in an attempt to reach a unanimous verdict." [339-340]. Given the hour, the Court excused the jurors for the evening with instructions that they should report back and that at "9:30 [a.m.], as soon as all of you are present, you can begin your deliberations." [341]. At 4:49 pm, after the Court had excused the jury, the Court, through the Clerk, received the following note: "Jury has one member who has made a decision and at least one other jury member who does not agree." [376].

The Court read the note to counsel the next morning. [343]. Counsel and the Court engaged in a colloquy regarding how to respond to the note. [343-362]. After

consulting with counsel, the trial judge brought the jury back into the courtroom and gave the following instruction:

> Jurors have a duty to deliberate with each other with an open mind. So, in a moment, I'm going to dismiss you, but I'm going to reiterate this portion of the instruction that I gave you yesterday. The verdicts must represent the considered judgment of each juror. ***In order to return a verdict, your verdict must be unanimous. That is, each juror must agree to the verdict. Each of you has a duty to consult with other jurors in an attempt to reach a unanimous verdict.*** You must decide this case for yourself and you should not surrender your honest belief about the affect or weight of evidence merely to return a verdict or solely because of other jurors' opinions. However, you should seriously consider the views of your fellow jurors just as you expect them to seriously consider your views. You should not hesitate to change an opinion if you are convinced by other jurors. Remember that you are not advocates but neutral judges of the facts. You'll make an important contribution to the cause of justice if you arrive at a just verdict in this case. Therefore, during your deliberations, your purpose should not to support your own opinion but to determine the facts.

(emphasis added) [363].

After receiving that instruction, jury deliberations proceeded from 10:05 a.m. until 11:48 a.m., at which time the jury advised that it had reached a decision. [365]. The jury returned to the courtroom, and the designated jury foreperson declared a verdict of $7,500 in compensatory damages and $75,000 in punitive damages. [368]. This decision was reflected on a signed Verdict Form. [377-378]. Neither side requested a polling of the jury. [368, 513].

On December 16, 2022 at 3:20 a.m., Juror #12 sent an e-mail to the trial judge's chambers which read:

> I did not agree on any of the decisions that was [*sic*] presented to me during the deliberations on the Civil Case trial that I had served on as a Juror on December 12, 2022. My recollection from your "Instructions" is that as Jurors we were suppose [*sic*] to agree on all terms unanimously.

[379]. On December 19, 2022, the Court contacted parties to inform them that one of the discharged jurors had contacted Chambers. The Court notified all trial counsel of this electronic communication. [380].

The revelation served as one of several bases for Kelecha's *pro se* Motion to Vacate Judgment and for a New Trial filed on January 10, 2023. [380-384]. On January 17, 2023, Defendant filed a supplemental Brief in Support of New Trial, through counsel, requesting that the judgment be vacated, and a new trial granted, based in part on the post-trial communication from the juror. [385-393]. Menghesha filed an Opposition on January 23, 2023. [394-401]. Kelecha then filed a Reply. [402-407]. With leave of Court, Menghesha filed a Surreply [408-428] and Kelecha filed a Sur-Surreply. [429-436].

On July 25, 2023, Judge Dayson issued a written Opinion in which she found: "that the juror's note to the Court following the jury's discharge does not warrant a new trial on its own, but rather, compels the Court to hold a hearing to determine the meaning of the juror's note." [437-452]. In support of that decision, the Court cited *United States v. Stover*, 329 F.3d 859, 864 (D.C. Cir. 2003), quoting

United States v. Wilson, 534 F.2d 375, 349 (D.C. Cir. 1976)): "[w]hen confronted with allegations of irregularity in the jury's proceedings, the trial judge has broad discretion to determine what manner of hearing, if any, is warranted."

The Court's Order clearly stated that, in the course of that hearing, it did not "intend to inquire as to the impressions of the jurors or other aspect of deliberations." [451]. Such actions would run afoul of the general proposing that a jury verdict should not be impeached by post-trial evidence. Rather, the Court stated that:

> [d]uring the hearing, the Court will conduct an extremely limited inquiry to ascertain whether the juror voted in assent with the announced verdict. This is in accordance with the 2016 amendments to Fed. R. Ev. 606(b), which allows the inquiry into "the verdict's accuracy" but not the mental processes that underly the verdict.

[451-452]. The Court then set a remote status hearing to discuss the particulars of such a hearing, and held its decision on Kelecha's Motion for New Trial and to Vacate Judgment in abeyance pending resolution of the issue of the post-verdict juror's note.

Menghesa then filed a Motion to Reconsider the Court's July 25, 2023 Order, and filed an Amended Motion on August 8, 2023. [453-463]. Kelecha filed an Opposition thereto on August 25, 2023. [464-471]. Menghesha filed a Reply on August 31, 2023. [472-474].

The parties appeared before the Court for a status conference on October 4, 2023. The focal point of that hearing was to seek guidance from the parties as to the nature and extent of the questioning of Juror #12. The trial judge determined that only the existence of a clerical error under Fed. R. Ev. 606(b)(3) would justify questioning Juror #12:

> THE COURT: in reviewing this motion to reconsider, I really sat down — and tried to figure out, okay, how do I ask this question that's consistent as you say, consistent with my order, that says that recognizes I can't get into the substance of deliberation, and I can 't get into sort of the thought process that went into each of the jurors' minds? ***And the only question I could come up with is, was this a clerical error? Because that's the only exception that this would possibly fit*** into. …
>
> There are three sort of answers to that. If the answer is yes, this is a clerical error, then I think that sort of begs the question, what comes next. But at least it sort of is within what the case law says I can inquire into***. If the answer is … no, it wasn't a clerical error, then I suppose that ends the inquiry, because I would say, okay, it's not a clerical error, which means I can't go any further.*** That would I can't go any further. Because if it's not a clerical error, then there's I can't inquire further, as everyone has acknowledged. Because that would get into the basically the deliberations of the jury. And if the … other answer is, I don't know what that means … again, it's — it would be very difficult to talk about it without getting into the issues of deliberations.

[482-483] (emphasis added).

As expected, the parties took contradictory positions in response to the Court's inquiry. Kelecha maintained that simply asking Juror #12 whether her vote was consistent with the reported verdict would be appropriate and determinative. [485-486]. Menghesha asserted that such post-verdict juror testimony would be inadmissible, because it does not provide insight as to whether the reporting of the jury verdict was a clerical error. [486-487].

The Court decided to give Kelecha an opportunity to fashion an appropriate inquiry to Jury #12, and set a status hearing for October 16, 2023. [493-495]. At that hearing, the Court considered the following voir dire proposed by Kelecha's counsel:

> 1. Near the end of your jury deliberations on December 14th, 2023 [sic], did the foreperson take or request from you, the jurors, a vote on the amount of general damages to be awarded referring to the award of $7,500?
>
>   If the answer to question 1 is yes, how did the foreperson ask you to express your vote in the amount of general damages?
>
>   Was it a hand vote or oral vote?
>
>   How, if at all, did you express to the foreperson your vote on general damages to be awarded?
>
>   If the answer is no, as a juror, were you not asked to take vote on the general damages to be awarded?
>
> 2. Near the end of your jury deliberations on December 14th, 2023 [sic], did the foreperson take a request from the

> jurors a vote on the amount of punitive damages to be awarded referring to the award of $75,000?
>
> If the answer to question 2 is yes, how did the foreperson ask you to express your vote in the amount of punitive damages?
>
> Was it a hand vote or oral vote?
>
> How, if at all, did you express to the foreperson your vote on punitive damages to be awarded?
>
> If the answer is no, as a juror, were you not asked to take vote on the punitive damages to be awarded?

[508-509].

The trial court rejected this proposed voir dire for the following reasons:

> "[t]he way that you' re proposing it is that the exception would swallow the rule against inquiring into the deliberative process." [510]
>
> "[I]t just seems to me that really the proposals here kind of illustrate why this post—inquiry is probably improper." [512]
>
> [I]t does not seem to me that it is expressed in a way that can be most reasonably read as a clerical rather than a disagreement with the verdict. And that any sort of post—trial inquiry at this point would run contrary to the prohibition the general prohibition against post—trial inquiry into the deliberative process. And again, given the fact that this does not appear to be reporting a clerical error, it's not as if he said that's not the amount I wanted, that's a different that's a different number than we talked about or something like that, this does seem to be more

> reasonably interpreted single juror seeking to impeach the verdict. [514]

In reaching its decision, the Court cited *Queen v. D.C. Transit System, Inc.*, 364 A.2d 145 (D.C App. 1976), which relied on *Leonard's of Plainfield v. Dybas*, 130 N.J.L. 135, 31 A.2d 496, 497 (Sup. Ct. 1943) for the proposition that the verdict is final when it is read in open court, or, if polling is requested and conducted, at the end of the poll.

Accordingly, Judge Dayson granted Menghesha's Motion for Reconsideration and denied Kelecha's Motion for New Trial. [519]. This was memorialized in a written Order dated October 16, 2023. [521]. Kelecha filed a Notice of Appeal on November 15, 2023. [539-557].

On November 14, 2023, Kelecha filed a Motion for Reconsideration of the October 16, 2023 Order. [522-528]. On November 9, 2023, Menghesha filed her Opposition. [529-530]. On December 6, 2023, Kelecha filed a Reply. [531-532]. On March 28, 2024, the trial court denied that motion. [532-538].

Statement of Facts

Sara Menghesha rented a furnished room in a building owned by Asegedech Kelecha located at 2013 4th Street, N.E., Washington, D.C. commencing on February 15, 2019 on a month-to month basis. [139]. The room came equipped with a bed, a desk, a chair and a closet. [239]. All utilities were included with the monthly rent. [239]. The parties agreed to a reduced monthly rental rate of $450, with the

understanding that the monthly rent would be raised to $500 once Menghesha obtained employment. [138, 240-241]. Under the terms of her lease, Menghesha was entitled to access to a ground floor kitchen shared by four cotenants. [139-140]. Kelecha used one room of the building as an office. [238].

Menghesha kept a small amount of personal property in her rented room: her clothing, shoes, a computer, her bankbook and three refills for her an asthma inhaler. [143-147, 172, 223].

While Menghesha was her tenant, Kelecha assisted her with her job search and online employment applications. She also drove Menghesha to and from the D.C. Department of Motor Vehicles to obtain a government identification card, and waited with her all day for it to be processed. [241-242].

Menghesha obtained gainful employment in June of 2019. [13:46]. In accordance with their initial lease discussion, Kelecha asked Menghesha to begin paying her $500 per month. [246-247]. Menghesha responded: “I’m not paying $500. I’m going to move out.” [247]. But she did not move out, and continued to pay $450 rather than $500 per month. [247].

On January 27, 2020, Kelecha gave Menghesha written notice that she wished to terminate Menghesha’s lease in thirty (30) days. [248-249, 277-278,131]. In response, Menghesha told Kelecha that she intended to move out of her rented room by the end of February 2020. [249-250].

On March 1, 2020, Menghesha sent a text message to Asegedech on March 1, 2020, requesting to pay her March 2020 rent. [86]. Kelecha sent a reply text stating: "We will give you back the deposit and for you to leave." [88-90, 154].

Menghesha testified that she attempted to pay $450 for her March 2020 rent on March 2, 2020. [153-154]. She followed-up with another text message on March 4, 2020 advising that she had placed her monthly rent check under Kelecha's office door. [155]. After Kelecha returned the check, Menghesha went to the post office and mailed it to her. [155]. On March 4, 2020, Kelecha texted Menghesha, advising her that she did not want the check and that she wanted Menghesha to move out. [887-90, 156]. Menghesha responded by advising Kelecha that she would move out once winter was over. [157]. Menghesha testified that she would be unable to move as planned because she could not find substitute lodging. [198].

The parties continued to exchange text messages between March 26 and April 2, 2020. [158, 282-285; 98-102]. In those communications, Kelecha advised Menghesha that she was giving her thirty (30) days' notice to leave. Mengesha objected, asserting her legal rights as a District of Columbia tenant, demanding "a legal document from court." [160-161, 102].

On April 1, 2020, Kelecha sent a second Notice to Quit to Menghesha. [217, 251-254, 285-286, 132]. Menghesha asserted that she sent a text to Kelecha on April 2, 2020 at 11:06 a.m. in which she asserted that (a) she was a lawful tenant that was

paying monthly rent, (b) that she had nowhere else to live and (c) that she was entitled to a court document before she could be evicted. Kelecha testified that she did not receive that text. [288].

During the month of April 2020, Menghesha took work as a part-time caretaker for an elderly gentleman. The job required Menghesha to stay overnight with him. In the morning, she would return to her rented apartment, eat breakfast, take a shower and sleep, and then leave. [140-142]. Menghesha estimated that she spent a total of two hours per day in the apartment in April of 2020. [211]. She had no recollection of Kelecha being in her office during the month of April 2020 due to the Covid-19 lockdown. [143].

As of the beginning of April 2020, Kelecha did not observe Menghesha entering, using or leaving the apartment at any time. Kelecha therefore assumed that Menghesha had terminated her month-to month tenancy. Despite the fact that there were eight other tenants living in the building four of which lived on the ground floor where Menghesha's room was located, she did not present any of those tenants as corroborating witnesses to establish her occupancy of her apartment in April of 2020. The record is devoid of any proof of an effort by Menghesha to deliver an April 2020 rent check to Kelecha, by simply walking upstairs and placing her rent check on or under the door of Kelecha's office. Equally absent is any written note or text from Menghehsa to Kelecha after April 2, 2020.

Menghesha testified that, due to Covid-19, Kelecha did not come to her office in the building in April, and only came to collect rent. [212]. In stark contrast, Kelecha testified that she was in her office from 9:00 a.m. until 5:00 or 6:00 p.m. "[m]ost days including even weekends." [256]. Kelecha did not see Menghesha at any time during the month of April 2020, and therefore assumed that she had terminated her tenancy and moved out. [257].

As someone that had been a landlord in the District of Columbia for twenty years, Kelecha was aware of the fact that she was obliged to obtain a Court Order to change the locks to a rental unit under lease. [274, 280]. She sent no such notice to Menghesha before changing locks because she concluded that Mengheha had concluded her lease and moved out.

On May 1, 2020, as was her custom at the conclusion of a tenancy, Kelecha changed the locks to the front door of the building and an inside door to the ground level apartments. [197, 258, 280]. Kelecha collected a small box of items left in Menghesha's former rented room, which she assumed to have been abandoned by Menghesha. She placed that box in the locked trunk of a vehicle for safekeeping, rather than trashing them, in case her former tenant returned to retrieve those items. [260-261, 281].

When Menghesha arrived at 2013 4th Street, N.E. on May 1, 2020 at around 5:00 to 5:15 p.m. she discovered that the front door locks had been changed and that

she could not obtain access, and that her belongings had been placed in storage. [165-167]. Menghesha asserted that she attempted to contact her landlord twice by telephone without success. [168]. She made no effort to text or e-mail Kelecha to request keys. [220]. She did not write a letter or note to Kelecha advising her that she had returned and wanted new keys [221]. Kelecha maintained that she received no telephone calls, voicemails or text messages from Menghesha requesting a new set of front door keys or access to her rented room or the personal property located therein. [263-264, 268-269].

Rather than communicating with Kelecha, Menghesha contacted the Washington Metropolitan Police. Because this was a civil matter, the responding officers made no attempt to relate Menghesha's concerns to Kelecha. [168-169]. On May 2, 2020, Menghesa went to the police station, where she was advised that "there is a judge that can hear your case." [170].

Initially, Menghesha was able to spend the night at her temporary job location from May 1-3, 2020. [171]. During the day she went to Habesha (northern Ethiopian) restaurants and rode busses around the District of Columbia to say warm and to have shelter. [170-172].

The temporary caretaker job and the option of sleeping at the family member's house ended. She asserted that she could not pay for a hotel room because her

bankbook was in her rented apartment.[1] [172]. She eschewed going to an emergency shelter due to her fear of contracting Covid-19. [172-173]. Menghesha slept at the Rhode Island Metro stop three nights. [172-174]. She used facilities at a local Giant to use the bathroom. [177]. During that time, she ran out of her asthma medication [223-224] and fell and dislocated her toe. [186-187, 221-223]. She received emergency treatment at a local hospital. [173, 175, 187-188]. At that point, a friend took Menghesha into her home for one night. [188-189].

Kelecha had no knowledge of Menghesha's whereabouts from May 1 through 7, 2022. Specifically, she was unaware of the fact that her former tenant had been living on the streets as a homeless person. [211]. There is no record evidence of any attempt by Menghesha to communicate by any means with Kelecha from May 1 through May 7, 2020 requesting new keys or access to her apartment. [264].

The following colloquy is impactful:

> Q. … Ms. Kelecha, if Ms. Menghesha had called or texted you or left a note, asking on May 1st or May 2nd or May 3rd, and asked for a copy of the key, would you have given her a key?
>
> A. Yes. I would ask her why (indiscernable).
>
> Q. Okay. So you would –

[1] The Plaintiff never explained why she could not travel to a branch of the bank for which she had a checking account to make a cash withdrawal. Presumably, she would have had at least $900 in her bank account which had not been paid as March or April rent.

> A. If I know she has a problem, no place to go, I will let her in and we will talk. (indiscernable). …
>
> Q. Okay. Would you have asked her where she was living though the month of April 2020?
>
> A. I would have asked her where she was, why she not –
>
> Q. At that time, you didn't know, did you?
>
> A. No.

[267].

Curiously, despite her claimed knowledge of her legal rights as a District of Columbia tenant, Menghesha did not seek judicial relief until May 7, 2022. On that date, Menghesha and Kelecha appeared before Judge Puig-Lugo for a hearing on a Temporary Restraining Order. [189]. The Court determined that the landlord had not followed proper eviction procedures, and that Menghesha was entitled to injunctive relief. [27-55]. Pursuant to Court Order, Kelecha provided Menghesha with new keys, and Menghesha again had access to the apartment building and her room. [189-190, 197]. [2]

[2] It is significant that Menghesha returned to live in the subject premises without rancor or hostility from Kelecha for many months.

Summary of Argument

The jury failed to follow the trial court's instructions by announcing a verdict that one juror asserted not unanimous. This should have been the subject of a post-trial hearing at which the dissenting juror, and perhaps the jury foreperson, was questioned through limited *voir dire* that did not intrude on the substance of the jury's deliberations.

There was insufficient record evidence to satisfy the clear and convincing threshold for an award of punitive damages in this case. Undisputed facts demonstrated that the Defendant lacked the requisite malice to justify a punitive damages award.

Assuming, *arguendo*, that there was sufficient record evidence to support an award of punitive damages, the amount of the award was Constitutionally excessive.

Argument

Standard of Review

District of Columbia Superior Court Rules of Civil Procedure provide that "[t]he Court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: (A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court or District of Columbia Courts." D.C. Super. Ct. R. Civ. P. 59(A). "New trials may be granted, for example, where the verdict is against the weight of the evidence, damages are excessive, the

trial was unfair, or there was a prejudicial legal error in the proceedings." *Bell v. Westinghouse Elec. Corp.*, 483 A.2d 324, 327 (D.C. 1984) (citing *Baber v. Buckley*, 322 A.2d 265, 266 (D.C. 1974)). "In ordering a new trial, the trial court must exercise sound discretion and the scope of appellate review is limited to determining whether there has been an abuse of discretion." *Baber*, 322 A.2d at 266.

"[P]unitive damages are not favored, but the rule is well-established in this jurisdiction that a jury may assess punitive damages in the proper case. What is a proper case is a question of law and an appellate court will set aside an award of punitive damages where it appears from the record that the evidence did not warrant submitting the issue of punitive damages to the jury." *Wanis v. Zwennes*, 364 A.2d 1193, 1195 (D.C. 1976), citing, by example, *Riggs National Bank v. Price*, 359 A.2d 25 (D.C App. 1976) and *Mills v Levine*, 98 U.S. App. D.C. 137, 233 F.2d 16, *cert denied*,352 U.S. 858, 77 S.Ct. 86 1 L.Ed.2d 67 (1956).

With respect to the issue of constitutionality of a punitive damages award, this Court has held:

> Rather than relying on mathematical ratios alone, we focus on the principles discussed in the Supreme Court cases, and specifically the concern that: 1) courts conduct a "meaningful and adequate review" of a jury's punitive damage award both at the trial and appellate level to ensure that the award is the product of a process that is entitled to a strong presumption of validity; 2) the award punishes truly reprehensible conduct; 3) the punitive damage award has some relation to the harm suffered by the plaintiff and

> evidences "reasonableness and proportionality," although there is no "bright-line" ratio, to ensure that the award is not grossly out of proportion to the severity of the offense; and 4) the award advances a State policy concern such as protection of the public by deterring the defendant or others from doing such wrong in the future.

Modern Management Co. v. Wilson, 997 A.2d 37, 52–53 (D.C. 2010).

I. The trial court committed reversible error by refusing to conduct a hearing to determine whether the jury's verdict was unanimous.

A verdict is the formal decision rendered at the conclusion of a trial. It represents the culmination of the entire legal process. *Legal Information Institute*. In trials before a jury, a verdict reflects the jury's finding or decision on the matter submitted to it in trial. *Merriam Webster Dictionary*.

> A defective verdict is a flawed verdict on which a judgment cannot be based. The verdict may be defective because of procedural irregularities during deliberations, or because of contradictions in its substantive conclusions or because of other legal inadequacies. When this happens the judge may call for further deliberations. However, if the problems are such that it cannot be resolved then the judge may declare a mistrial.

https://definitions.uslegal.com/d/defective-verdict/.

Rule 48(b) of the Superior Court Rules of Civil Procedure mandates that all jury verdicts must be unanimous. Rule 58(b)(2)(A) specifies that, when a jury returns a special verdict, then "the court must promptly approve the form of the judgment, which the clerk must promptly enter …"

The trial court's ultimate refusal to question Juror #12 as to the import of her e-mail communication constituted reversible error. The first juror note at the commencement of jury deliberations foreshadowed the distinct possibility of a hung jury. The trial court properly sought to cure that by instructing the jury that it had a duty to engage in collaborative discussion with the objective of reaching a unanimous verdict. [362-364]. In response, one of the jurors requested that the Court provide the jury with a copy of the oath that they took as jurors, and the Court agreed to do so. [364].[3] The jury deliberations then continued from 10:05 a.m. until 11:48 a.m., at which time a jury note advised the Court "we have reached our decision." [365].

An objective consideration of this sequence of events leads to the logical conclusion that something improper incurred during jury deliberations. Within ten minutes of when the jury was dismissed for the day at the close of the evidence on December 13, 2022, two jurors had already staked out antipodal positions on the verdict to be reached. But the next day, after slightly more than 1½ hours of deliberation, the jury foreperson advised the Court, not that the jury had reached a "verdict," but that it had made a "decision." And less than two days after the verdict was announced in open court, a member of that jury, while no longer surrounded by

[3] The record reflects that the jurors were sworn [Transcript of December 12, 2022 at 76]. The substance of the oath was not transcribed.

fellow jurors, transmitted an e-mail at 3:20 a.m. to advise the presiding judge that she did not agree to the jury's decision, and that therefore the verdict was not unanimous.

The December 16, 2022 e-mail of Juror #12 advised the Court that the verdict announced in open court and memorialized in writing on the Verdict Sheet signed by the jury foreperson was, in fact, a defective verdict. By definition, a valid verdict in the District of Columbia requires unanimity. Juror #12's communication made it clear that there was no such unanimity here.

It was for this reason, among others, that Kelecha moved for a new trial. In response, the trial court initially decided to hold a hearing to determine the meaning of the juror's note in order to be able to determine whether this jury irregularity could serve as the basis for a new trial. Kelecha maintains that the Court's instincts were correct at that point, and that it was a proper exercise of the Court's discretion to schedule such a hearing and to question Juror #12.

But when Menghesha filed her Motion for Reconsideration, the Court reversed its decision. In doing so, the Court relied on Rule 606(b) of the Federal Rules of Evidence, as adopted by the D.C Court of Appeals in *Fortune v. United* States, 65 A,3d 75 (D.C. App. 2013):

> (1) Prohibited Testimony or Other Evidence. During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of

> anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.
>
> (2) Exceptions. A juror may testify about whether: (A) extraneous prejudicial information was improperly brought to the jury's attention; (B) an outside influence was improperly brought to bear on any juror; or (C) a mistake was made in entering the verdict on the verdict form.

A careful review of the structure of this Rule demonstrates the analytical error of the trial court. Sub-subsection 1 specifies the subjects on which a juror may ***not*** be questioned: (1) any statement made or incident that occurred during the jury's deliberations; (2) the effect of anything on that juror's or another juror's vote; or (3) any juror's mental processes concerning the verdict or indictment. The issue to be resolved by Juror #12's note would not require the revelation of any of those three items.

Sub-subsection 2 specifies exceptions to the prohibitions set forth in Sub-subsection 1.[4] But since none of the items set forth in Sub-subsection 1 applied here, the exceptions set forth in Sub-subsection 2 were ***irrelevant*** to the Court's analysis.

[4] "When the terms of a statute are undefined and not recognized terms of art, we presumptively accord them their ordinary meaning in common usage, taking into account the context in which they are employed …" *Hood v. U.S.*, 28 A.3d 553, 559 (D.C. App. 2011), citing *District of Columbia v. Jerry M.,* 717 A.2d 866, 871 (D.C. 1998). The ordinary meaning of the word "exception" is "a case to which a rule does not apply." *Merriam Webster Dictionary*.

Accordingly, the Court erred in basing its ruling on the absence of any "clerk's error" under Exception 2(c).

Kelecha maintains that the proper analytical focus of the trial court should have been whether the requested voir dire of Juror #12 would be prohibited under Sub-subsection 1. The answer to that question is a resounding "No." Kelecha should have been given an opportunity to discover through voir dire of Juror #12 whether there was a unanimous verdict at the time that it was announced in open court and memorialized on the signed verdict sheet.

The following Notes of the Advisory Committee on Proposed Rules concerning this evidentiary rule are instructive:

> … The familiar rubric that a juror may not impeach his own verdict, dating from Lord Mansfield's time, is a gross oversimplification. The values sought to be promoted by excluding the evidence include freedom of deliberation, stability and finality of verdicts, and protection of jurors against annoyance and embarrassment. *McDonald v. Pless*, 238 U.S. 264, 35 S.Ct. 785, 59 L.Ed. 1300 (1915). ***On the other hand, simply putting verdicts beyond effective reach can only promote irregularity and injustice.*** The rule offers an accommodation between these competing considerations.
>
> The mental operations and emotional reactions of jurors in arriving at a given result would, if allowed as a subject of inquiry, place every verdict at the mercy of jurors and invite tampering and harassment. See *Grenz v. Werre*, 129 N.W.2d 681 (N.D. 1964). The authorities are in virtually complete accord in excluding the evidence. Fryer, Note on Disqualification of Witnesses, Selected Writings on Evidence and Trial 345, 347 (Fryer ed. 1957); Maguire,

> Weinstein, et al., Cases on Evidence 887 (5th ed. 1965); 8 Wigmore §2340 (McNaughton Rev. 1961). As to matters other than mental operations and emotional reactions of jurors, substantial authority refuses to allow a juror to disclose irregularities which occur in the jury room, but allows his testimony as to irregularities occurring outside and allows outsiders to testify as to occurrences both inside and out. 8 Wigmore §2354 (McNaughton Rev. 1961). However, ***the door of the jury room is not necessarily a satisfactory dividing point, and the Supreme Court has refused to accept it for every situation.*** *Mattox v. United States*, 146 U.S. 140, 13 S.Ct. 50, 36 L.Ed. 917 (1892).
>
> Under the federal decisions the central focus has been upon insulation of the manner in which the jury reached its verdict, and this protection extends to each of the components of deliberation, including arguments, statements, discussions, mental and emotional reactions, votes, and any other feature of the process. …

(emphasis added).

In the present case, there was no issue concerning the protection of jurors against annoyance, harassment or embarrassment: Juror #12 voluntarily contacted the court to disclose her concerns. The issue that she raised in her electronic transmission did not concern mental operations and emotional reactions of jurors in arriving at the given result. The problem which the juror's note identified had nothing to do with the deliberative process of reaching a verdict: ***the deliberative process had ceased improperly when the nonunanimous verdict was announced***.

Where there is colorable evidence of irregularity and injustice, questionable verdicts should be subject to judicial scrutiny. The Ninth Circuit *requires* a post-

verdict inquiry into juror deliberations if the court learns of a possible incident of juror misconduct. *United States v. Bagnariol,* 665 F.2d 877, 884 (9th Cir.1981). In *U.S. v. Madrid,* 842 F.2d 1090, 1094 (9th Cir.1988), the court stated that a district court is required to hold a hearing upon finding a "reasonable possibility of prejudice." See also *Economou v. Little*, 850 F. Supp. 849 (N.D. Calif. 1994). A respected treatise states that "Rule 606(b) would not bar testimony by a juror that all the jurors agree that through inadvertence, oversight or mistake the verdict announced was not the verdict on which agreement had been reached." J. Weinstein, *Weinstein's Evidence* §606[04], at p. 606-40.

In *State v. Johnson,* 40 Kan. App. 2d 1059, 1081, 198 P.3d 769 (2008), the Kansas Court of Appeals held that the trial court committed reversible error by failing to inquire into the jury's verdict where post-trial juror affidavits suggested that the verdict was not unanimous.

In *Attridge v. Cencorp Division of Dover Technologies Int'l, Inc.,* 836 F.2d 113 (2d Cir.1987), a comparative negligence case, the jury found the plaintiff eighty per cent negligent. In response to a special verdict question about damages suffered, the jury entered the figure of $150,000. The verdict was returned and the jury was discharged. Afterward, two jurors told the courtroom deputy that they believed the $150,000 figure to be the net recovery for the plaintiffs. The deputy informed the judge who recalled the jury the following morning. Over the defendant's objection,

the judge interviewed the jurors. Each stated that the plaintiffs were to receive a net recovery of $150,000. The judgment was entered accordingly.

On appeal, the Second Circuit affirmed. The court stated that the permissibility of juror testimony depended on the purpose for which it was offered. *Id.* at 117. The court approved juror interviews that were "designed to ascertain what the jury decided and not why they did so." *Id.* The court then noted that the judge limited his inquiry to a single question: "What was your understanding as to what the verdict was; what was the jury verdict?" *Id.* The court concluded that "the interviews were intended to resolve doubts regarding the accuracy of the verdict announced, and not to question the process by which those verdicts were reached" and affirmed the district court. *Id.*

Other courts have found jurors to be competent witnesses on the issue of whether the verdict delivered was the one agreed upon. *See, e.g., United States v. Dotson,* 817 F.2d 1127 (5th Cir.1987) (juror's affidavit "admissible to show that the verdict delivered was not that actually agreed upon) citing *University Computing Co. v. Lykes-Youngstown Corp.,* 504 F.2d 518, 547-48 n. 43 (5th Cir.1974)); *Fox v. United States,* 417 F.2d 84, 89 (5th Cir.1969) ("It has long been well settled that the affidavit of a juror is admissible to show the true verdict or that no verdict was reached at all."); *Young v. United States,* 163 F.2d 187, 189 (10th Cir. 1948) (jurors are competent witnesses to show that through oversight, inadvertence, or mistake

respecting the substance of the verdict returned, it was not the verdict reached in the jury room); *Mount Airy Lodge, Inc. v. Upjohn Co.,* 96 F.R.D. 378 (E.D.Pa.1982) (FRE 606(b) does not preclude the judge from interviewing the jurors *in camera* as to whether the verdict returned, through mistake or inadvertence, was not what the jurors intended); *U.S. v. Merritt*, 2014 WL 3535064 (E.D. Pa. 2014) (Just days after the trial, three of the jurors appeared on a local news station stating that they voted not guilty on a conspiracy to commit murder in aid of racketeering count and that the verdict of guilty on that count was not unanimous. As a result, the court decided to poll the jury, and determined that nine of the twelve jurors indicated that some error was made, and thereupon granted a mistrial.)

The trial court appears to have found it significant that neither side requested a polling of the jury after the verdict was published in open court. S.C.R. 48(c) states:

> (c) POLLING. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

The absence of polling does not negate the fact that Juror #12 did not agree to the announced verdict. Contrast, *United States v. Weiner,* 578 F.2d 757 (9th Cir. 1978), *cert. denied,* 439 U.S. 981, 99 S.Ct. 568, 58 L.Ed.2d 651 (1978) ("Once a verdict has been delivered and accepted in open court, ***and the jury is polled and discharged***, jurors may not claim that their assent was mistaken or unwilling.

[Citation]. Attacks on jury unanimity such as the one attempted here are also inappropriate ***after the jurors have assented to the verdict in a poll in open court.***" (emphasis added)); *Martinez v. Ashton,* 124 Colo. 23, 26, 233 P.2d 871, 873 (1951).

The trial court erred in finding that the absence of a clerical error precluded a post-trial investigation of the validity of the jury verdict. The question posed was not ***how the jury reached its verdict***, but ***whether there ever was a verdict***. The failure of the trial court to take action to answer that question significantly prejudiced the Appellant. Testimony from Juror #12 would have provided significant substance to what could reasonably be inferred from the chronology of events, and given clear support for the Motion for New Trial. Having been prejudicially deprived of that opportunity, the Appellant is now entitled to a new trial.

II. The record for this case does not demonstrate clear and convincing evidence of malice to support an award of punitive damages.

"Punitive damages depend … upon the intent with which the wrong was done." *Washington Post Co. v. O'Donnell,* 43 App.D.C. 215, 240, *cert. denied,*238 U.S. 625, 35 S.Ct. 663, 59 L.Ed. 1495 (1915); *accord, Afro–American Publishing Co. v. Jaffe,* 366 F.2d 649, 662 (D.C. Cir. 1966); *Wardman–Justice Motors, Inc. v. Petrie,* 59 App.D.C. 262, 266, 39 F.2d 512, 516 (D.C. Cir. 1930). Punitive damages may be awarded "only if it is shown by clear and convincing evidence that the tort

committed by the defendant was aggravated by egregious conduct and a state of mind that justifies punitive damages." *Jonathan Woodner Co. v. Breeden,* 665 A.2d 929, 938 (D.C.1995), *cert. denied,* 519 U.S. 1148, 117 S.Ct. 1080, 137 L.Ed.2d 215 (1997). The requisite state of mind has been described by this court as "outrageous conduct which is malicious, wanton, reckless, or in willful disregard for another's rights." *See, e.g., Vassiliades v. Garfinckel's, Brooks Brothers, Miller & Rhoades, Inc.,* 492 A.2d 580, 593 (D.C.1985).

According to the Supreme Court in *Colorado v. New Mexico*, 467 U.S. 310, 316, 104 S. Ct. 2433, 81 L. Ed 2d 247 (1984), "clear and convincing" means that the evidence is highly and substantially more likely to be true than untrue. See C. McCormick, *Law of Evidence* §320, p. 679 (1954). In other words, the fact finder must be convinced that the contention is highly probable. "[T]o be clear and convincing, evidence should be 'clear' in the sense that it is certain, plain to the understanding, and unambiguous and 'convincing' in the sense that it is so reasonable and persuasive as to cause you to believe it.'" Maryland Civil Pattern Jury Instruction 1:8(b) (2d ed. 1989); *Vogel v. State*, 315 Md. 458, 470, 554 A.2d 1231 (1989); *Weisman v. Connors*, 76 Md. App. 488, 503-05, 547 A.2d 636 (1988) *cert. denied*, 314 Md. 497, 551 A.2d 868 (1989).

The trial of this case presented two significantly different versions of what transpired between May 1 and 7, 2020. Menghesha sought to paint the picture of an

unscrupulous and malicious landlord that that deliberately locked a lawful tenant out of her rented apartment and put her out onto the mean streets of the District of Columbia in the midst of a medical pandemic.[5] Kelecha presented testimony that she mistakenly believed that her tenant had voluntarily and deliberately terminated her tenancy on April of 2020, and acted in her customary manner at the conclusion of a tenancy by changing locks.

There was undisputed evidence presented at trial to support the Defendant's version of facts. Menghesha was never seen at the apartment building during the entire month of April 2020. Menghesha made no effort to call, text or e-mail Kelecha to demand access to her rented room after the locks were changed on May 1, 2020. Accordingly, Kelecha had no knowledge that Menghesha had been rendered homeless as of May 1, 2020. Kelecha provided unrefuted testimony that, had she heard from Menghesha in early May, and learned that she was homeless, she would have given Menghesha a key and discussed her situation with her. This is the same landlord that had agreed to a reduced rental rate when Menghesa was unemployed and helped her with her online applications to obtain employment. This is the same

[5] At the time that Kelecha changed the locks, there were certain Mayor's Emergency Orders in place concerning the Covid-19 health crisis. These included a March 30, 2020 Order that all D.C. residents stay at home except to engage in essential services, the closure of all nonessential businesses and prohibitions on large gatherings. [181-185, 191, 103-130]. The trial court took judicial notice of these emergency orders and they were admitted into evidence for consideration by the jury.

landlord that safely stored Menghesha's personal property in the event that she returned for it, rather than trashing it as abandoned property.

Judge Puig-Lugo's ruled that Kelecha had wrongfully evicted Menghesha by failing to follow proper procedures for terminating a District of Columbia tenancy. That ruling does not inexorably lead to a finding that the eviction was malicious. Kelecha sought to terminate Menghesha's tenancy by respectful communication with her tenant rather than the formality and aggression of civil litigation. She mistakenly believed that her method had been successful when her tenant disappeared in April of 2020.

There was no record evidence that Kelecha was aware that Menghesha was asthmatic, and required daily use of an inhaler. Menghesha did not testify that any inhalers were among the items in the box of personal property returned to her on the evening of May 7, 2020.

There was no evidence, direct or circumstantial, that Kelecha was aware of the fact that the proximate result of her changing the locks to her apartment building would transform what she believed to be her former tenant into a vagrant without a roof over her head to cook, bathe or sleep.

It is for these reasons that the Appellant maintain that there was not clear and convincing proof of the requisite malice to support a claim for punitive damages. Absent such *scienter*, Kelecha could not be held liable for punitive damages.

Alternatively, Kelecha asserts that the punitive damages award was excessive, and should be reduced by way of a *remittitur.* The jury rendered a verdict that was ten times the amount of the compensatory damages what they determined to be fair and reasonable for Ms. Menghesha's period of wrongful eviction. Such an award was excessive as a matter of law.

> An excessive verdict is one which "is `beyond all reason, or ... is so great as to shock the conscience.'" *Wingfield v. Peoples Drug Store, Inc.*, 379 A.2d 685, 687 (D.C.1977) (citation omitted); *see Otis Elevator Co. v. Tuerr*, 616 A.2d 1254, 1261 (D.C.1992); *Phillips v. District of Columbia*, 458 A.2d 722, 724 (D.C.1983); *Graling v. Reilly*, 214 F.Supp. 234, 235 (D.D.C. 1963) (the test is whether the verdict "is so inordinately large as obviously to exceed the maximum limit of a reasonable range within which the jury may properly operate").
>
> Excessiveness refers not only to the amount of the verdict but to whether, in light of all the facts and circumstances, the award of damages appears to have been the product of passion, prejudice, mistake, or consideration of improper factors rather than a measured assessment of the degree of injury suffered by the plaintiff. *See District of Columbia v. Murtaugh*, 728 A.2d 1237, 1241 (D.C.1999); *Gebremdhin v. Avis Rent-A-Car System, Inc.*, 689 A.2d 1202, 1204 (D.C.1997); *Moss v. Stockard*, 580 A.2d 1011, 1035 (D.C. 1990); *May Dep't Stores v. Devercelli*, 314 A.2d 767, 775 (D.C.1973).

Scott v. Crestar Financial Corp., 928 A.2d 680, 688 (D.C. App. 2007). See also, *Knight v. Georgetown University*, 725 A.2d 472, 486 (D.C. App. 1999); *Phillips v. District of Columbia*, 458 A.2d 722, 724 (D.C. 1983).

III. The punitive damages verdict in this case was unconstitutionally excessive.

In *BMW of N. Am. Inc. v. Gore*, 517 U.S. 559, 574-75, 116 S.Ct. 1589, 134 L.Ed. 809 (1996), the Supreme Court articulated three guideposts for reviewing courts to use in evaluating whether punitive damages awards are unconstitutionally excessive: (1) the degree of reprehensibility of the conduct; (2) the ratio of the punitive damages to the actual harm inflicted on the plaintiff; and (3) a comparison of the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct.

In *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419, 123 S.Ct. 1513, 155 L.Ed. 2d 585 (2003), the Supreme Court "provided additional guidance on how a reviewing court should evaluate the level of reprehensibility of the defendant's conduct." *Modern Management Co. v. Wilson*, *supra* at 55. The factors to be considered when examining reprehensibility include whether: (1) "the harm caused was physical as opposed to economic"; (2) "the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others"; (3) "the target of the conduct had financial vulnerability"; (4) "the conduct involved repeated actions or was an isolated incident"; and (5) "the harm was the result of intentional malice, trickery, or deceit, or mere accident." *Campbell* at 428.

In the present case, Menghesha made it clear that she was not seeking compensation for her dislocated toe. Accordingly, her physical harm, while not *de*

minimus, was limited in scope and temporary. The health and safety of Menghesha was not a factor in Kelecha's decision to change locks; she had no reason to believe that what she believed was her former tenant had no alternative living arrangements. The lock-out was an isolated incident resulting from a misunderstanding due to a lack of adequate communication.

Campbell further stated that "courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of harm to the plaintiff and to the general damages recovered." *Id.* at 426. "Our jurisprudence and the principles it has now established demonstrate, however, that, in practice, few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process." *Id.* at 425. In *Pacific Mut. Life Ins. v. Haslip,* 499 U.S. 1, 23-24, 111 S. Ct. 1032, 113 L. Ed. 2d 1 (1991), the Supreme Court fund that an award of more than four times the amount of compensatory damages "may be close to the line" or "constitutional propriety" depending on the circumstances.

An award of punitive damages may be reduced if it is "grossly excessive." *Robinson v. Sarisky*, 535 A.2d 901, 908 (D.C. 1988), citing *Franklin Investment Co. v. Homburg,* 252 A.2d 95, 99 (D.C. App. 1969); *General Motors Acceptance Corp. v. Froelich,* 106 U.S. App. D.C. 357, 360, 273 F.2d 92, 95 (1959). "[T]he amount of such damages should be enough to inflict punishment, while not

so great as to exceed the boundaries of punishment and lead to bankruptcy." *Daka, Inc. v. Breiner,* 711 A.2d 86, 101 D.C. 1998); *accord, Fraidin v. Weitzman,* 93 Md.App. 168, 212, 611 A.2d 1046, 1068 (1992) ("A defendant need not be financially destroyed in order to be punished"); *Chatman v. Lawlor*, 831 A.2d 395, 402 (D.C. 2003).

The jury in this case rendered a verdict of $7,500 in compensatory damages and $75,000 in punitive damages. Accordingly, the punitive damages award was ***ten (10) times*** the size of the compensatory damages award. Precedent mandates that such an award is Constitutionally impermissible, and should therefore be reduced by way of a *remittitur*.[6]

[6] Constitutional claims not made in the trial court are ordinarily unreviewable on appeal. *Thompson v. District of Columbia,* 407 A.2d 678, 679 n. 2 (D.C.1979); *D.D. v. M.T.,* 550 A.2d 37, 48 (D.C.1988). However, this court deviates from this general rule "in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record." *Williams v. Gerstenfeld,* 514 A.2d 1172, 1177 (D.C.1986). To invoke this plain error exception, the appellant must show that the alleged error is obvious and "so clearly prejudicial to substantial rights as to jeopardize the very fairness and integrity" of the proceeding. *In re D.S.,* 747 A.2d 1182, 1188 (D.C. 2000) (quoting *Watts v. United States,* 362 A.2d 706, 709 (D.C.1976) (en banc)). This is such a case.

Conclusion

For the reasons stated, the verdict and judgment in this case should be vacated and a new trial should be granted. Alternatively, the punitive damages award should be remanded to the trial court for an appropriate *remittitur*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of June, 2024 I served a copy of the Appellant's Brief and the Appendix by first class mail, postage prepaid on:

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D.C. Superior Court Rules

Rule 48. Number of Jurors; Verdict; Polling

(a) NUMBER OF JURORS. A jury must begin with at least 6 jurors, but the court may empanel up to 6 additional jurors as it deems necessary. Each juror must participate in the verdict unless excused under Rule 47(c).

(b) VERDICT. Unless the parties stipulate otherwise, the verdict must be unanimous and must be returned by a jury of at least 6 members.

(c) POLLING. After a verdict is returned but before the jury is discharged, the court must on a party's request, or may on its own, poll the jurors individually. If the poll reveals a lack of unanimity or lack of assent by the number of jurors that the parties stipulated to, the court may direct the jury to deliberate further or may order a new trial.

Rule 58. Entering Judgment

(a) SEPARATE DOCUMENT. Every judgment and amended judgment must be set out in a separate document, but a separate document is not required for an order disposing of a motion:

(1) for judgment under Rule 50(b);

(2) to amend or make additional findings under Rule 52(b);

(3) for attorney's fees under Rule 54;

(4) for a new trial, or to alter or amend the judgment, under Rule 59; or

(5) for relief under Rule 60.

(b) ENTERING JUDGMENT.

(1) Without the Court's Direction. Subject to Rule 54(b) and unless the court or administrative order requires otherwise, the clerk must, without awaiting the court's direction, promptly prepare, sign, and enter judgment when: (A) the jury returns a general verdict; (B) the court awards only costs or a sum certain; or (C) the court denies all relief.

(2) Court's Approval Required. Subject to Rule 54(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter, when: (A) the jury returns a special verdict or a general verdict with answers to questions; or (B) the court grants other relief not described in Rule 58(b).

(c) TIME OF ENTRY. For purposes of these rules, judgment is entered at the following times:

(1) if a separate document is not required, when the judgment is entered in the civil docket under Rule 79(a); or

(2) if a separate document is required, when the judgment is entered in the civil docket under Rule 79(a) and the earlier of these events occurs: (A) it is set out in a separate document; or (B) 150 days have run from the entry in the civil docket.

(d) REQUEST FOR ENTRY. A party may request that judgment be set out in a separate document as required by Rule 58(a).

(e) COST OR FEE AWARDS. Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under District of Columbia Court of Appeals Rule 4(a)(4) as a timely motion under Rule 59.

Rule 59. New Trial; Altering or Amending a Judgment

(a) IN GENERAL.

(1) Grounds for New Trial. The court may, on motion, grant a new trial on all or some of the issues—and to any party—as follows: (A) after a jury trial, for any reason for which a new trial has heretofore been granted in an action at law in federal court or District of Columbia courts; or (B) after a nonjury trial, for any reason for which a rehearing has heretofore been granted in a suit in equity in federal court or District of Columbia courts.

(2) Further Action After a Nonjury Trial. After a nonjury trial, the court may, on motion for a new trial: (A) open the judgment if one has been entered; (B) take additional testimony; (C) amend findings of fact and conclusions of law or make new ones; and (D) direct the entry of a new judgment.

(b) TIME TO FILE A MOTION FOR A NEW TRIAL. A motion for a new trial must be filed no later than 28 days after the entry of judgment.

(c) TIME TO SERVE AFFIDAVITS. When a motion for a new trial is based on affidavits, they must be filed with the motion. The opposing party has 14 days after being served to file opposing affidavits. The court may permit reply affidavits.

(d) NEW TRIAL ON THE COURT'S INITIATIVE OR FOR REASONS NOT IN THE MOTION. No later than 28 days after the entry of judgment, the court, on its own, may order a new trial for any reason that would justify granting one on a party's motion. After giving the parties notice and an opportunity to be heard, the court may grant a timely motion for a new trial for a reason not stated in the motion. In either event, the court must specify the reasons in its order.

(e) MOTION TO ALTER OR AMEND A JUDGMENT. A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment.

Federal Rules of Evidence

Rule 606. Juror's Competency as a Witness

(a) At the Trial. A juror may not testify as a witness before the other jurors at the trial. If a juror is called to testify, the court must give a party an opportunity to object outside the jury's presence.

(b) During an Inquiry into the Validity of a Verdict or Indictment.

(1) ***Prohibited Testimony or Other Evidence.*** During an inquiry into the validity of a verdict or indictment, a juror may not testify about any statement made or incident that occurred during the jury's deliberations; the effect of anything on that juror's or another juror's vote; or any juror's mental processes concerning the verdict or indictment. The court may not receive a juror's affidavit or evidence of a juror's statement on these matters.

(2) ***Exceptions*****.** A juror may testify about whether:

(A) extraneous prejudicial information was improperly brought to the jury's attention;

(B) an outside influence was improperly brought to bear on any juror; or

(C) a mistake was made in entering the verdict on the verdict form.