

A celebrity from State A sued a reporter from State B in a State A federal court for defamation, invoking diversity jurisdiction. The celebrity hired a 20-year-old process server to deliver a copy of the summons and complaint to the reporter's home in State B.

The process server went to the reporter's home and left the summons and complaint with the reporter's nephew, who had answered the door while staying at the reporter's home for a family reunion. The nephew is a 14-year-old honors student. He placed the documents on the reporter's kitchen table, but the reporter did not discover the documents until two weeks later.

The reporter immediately filed a motion to dismiss for insufficient service of process. Assume that both states' requirements for service of process are identical to the requirements of the Federal Rules of Civil Procedure.

Should the court grant the motion?

- A. No, because the nephew was of suitable age and discretion.
- B. No, because the reporter did not comply with the service-waiver provisions.
- C. Yes, because the nephew did not reside in the reporter's home.
- D. Yes, because the process server was not of suitable age to deliver process.

## Explanation:

### Serving process on defendant-individual

(FRCP 4(e))

Type of service	Requirements
State rules	Follow rules of state where court sits or service is made
Actual delivery	Deliver process to defendant personally
Substituted delivery	Deliver process to: <ul style="list-style-type: none"><li>• defendant's agent authorized by appointment or law to receive process <i>or</i></li><li>• resident of defendant's dwelling who is of suitable age &amp; discretion</li></ul>

**FRCP** = Federal Rule of Civil Procedure.

A defendant must receive notice of a lawsuit through **service of process**—ie, delivery of the [summons and complaint](#). Under Federal Rule of Civil Procedure (FRCP) 4, a plaintiff can **properly serve** a defendant who is an individual located in the United States by:

- following the **rules of the state** where the **court sits** or **service is made**
- having process delivered to the **defendant personally** (or to an **agent authorized** to receive process) *or*
- having process delivered to the **defendant's dwelling** and left with a **resident of suitable age and discretion**—ie, old enough to possess the limited capacity necessary to comprehend the situation.

Here, the service rules for State A (where the court sits) and State B (where service was attempted) are identical to FRCP 4. The summons and complaint were left with the reporter's nephew, but there is no indication that he was the reporter's authorized agent. And though the nephew was likely of suitable age (14 years old) and discretion (honors student), he was merely a guest (not a resident) at the reporter's home (**Choice A**). Therefore, the motion to dismiss for insufficient service of process should be granted.

**(Choice B)** A plaintiff can request that the defendant [waive service](#) in exchange for more time (60 days) to respond to the complaint. But since the celebrity did not request a waiver, the reporter did not need to comply with the waiver requirements.

**(Choice D)** FRCP 4 allows process to be served by any person who is at least 18 years old and not a party to the suit (as seen here).\*

\*The process server (other than a U.S. or deputy marshal) must then file a proof-of-service affidavit if service was made in the U.S. and not waived. In contrast, proof of service in a foreign country can be made pursuant to an applicable treaty or convention, by a receipt signed by the addressee, or by other evidence that satisfies the court. However, providing proof of service does not affect the validity of service.

**Educational objective:**

A plaintiff can serve an individual defendant located in the U.S. by (1) following the rules of the state where the court sits or service is made, (2) having process delivered to the defendant personally (or his/her authorized agent), *or* (3) having process delivered to the defendant's dwelling and left with a resident of suitable age and discretion.

**References**

- Fed. R. Civ. P. 4(e) (service of process on an individual in the United States).

Copyright © UWorld. All rights reserved.