

Before filing a federal civil action against a seller, a buyer's attorney unsuccessfully tried to settle with the seller's attorney. Three days before the limitations period on the buyer's claim expired, the buyer's attorney told the seller's attorney that she would file a complaint that day and asked the seller's attorney whether he would accept service of the summons and complaint. The seller's attorney agreed to do so. The buyer's attorney promptly filed the complaint but forgot to serve the seller's attorney.

Four months later, the buyer's attorney received a voicemail from the seller's attorney asking whether she had ever filed the buyer's complaint. The buyer's attorney immediately mailed a copy of the complaint to the seller's attorney.

The following week, the seller's attorney moved to dismiss the complaint for failure to effect timely service of process.

Is the court likely to grant the seller's motion to dismiss?

- A. No, because under the Federal Rules of Civil Procedure, the filing of the complaint commences an action and the buyer's complaint was timely filed.
- B. No, because the seller's attorney had notice of the complaint and agreed to accept service.
- C. Yes, because the buyer's attorney did not show good cause for her failure to effect timely service.
- D. Yes, because the limitations period expired without timely service.

Explanation:

A plaintiff must provide a defendant with notice of a lawsuit through **service of process**—ie, the delivery of a summons and a complaint. Process must be served on a **defendant in the U.S. within 90 days** after the **complaint is filed**.^{*} Here, service of process was untimely because the buyer's attorney failed to effectuate service until four months (120 days) after filing the complaint. When this occurs, the court generally must either:

- **dismiss the action** without prejudice *or*
- **order service of process within a specified time.**

However, if the plaintiff provides **good cause** for why service was untimely, the court must **extend the time** for service for an **appropriate period**. Good cause exists if service was delayed due to **matters outside of the plaintiff's control**—not the plaintiff's own mistake or ignorance. Since the buyer's attorney simply forgot to serve the seller's attorney, good cause does not exist. Therefore, the court will likely grant the seller's motion to dismiss.

^{*}The 90-day deadline for service of process applies to defendants in the U.S. For defendants in a foreign country, most federal courts require that process be served with due diligence.

(Choice A) FRCP 3 provides that an action is commenced when the plaintiff files the complaint. However, the plaintiff still must timely serve process or provide good cause for failing to do so (neither seen here).

(Choice B) The fact that the seller's attorney had informal notice of the complaint and agreed to accept service of process does not excuse the untimely service of process. This formal notice is required so that a defendant has definitive knowledge that the plaintiff intends to litigate the action in court.

(Choice D) A statute of limitations is the statutory deadline for a plaintiff to *file* that claim in court—not *serve* process on the defendant. Since the buyer's attorney filed the complaint three days before the limitations period on the claim expired, this is not a reason justifying dismissal.

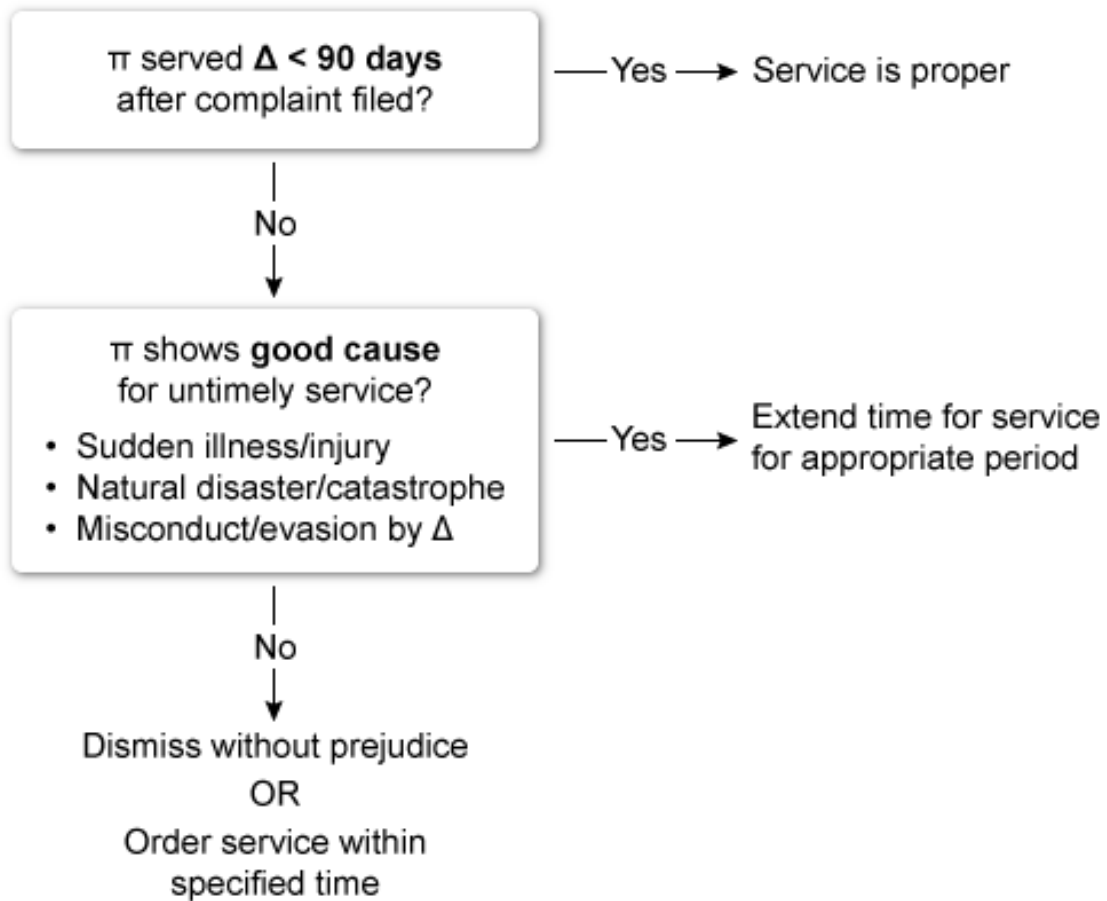
Educational objective:

A court must extend the time for a plaintiff to serve the defendant with process when the plaintiff provides good cause for failing to timely effectuate service. Good cause exists if service was delayed due to matters outside of the plaintiff's control.

References

- Fed. R. Civ. P. 4(m) (deadline for service of process).
- 4B Charles Alan Wright et al., Federal Practice and Procedure § 1137 (4th ed. 2020) (explaining the general time limit for service of process and the good-cause exception).

Time limit for domestic service of process (FRCP 4(m))



FRCP = Federal Rule of Civil Procedure; **π** = plaintiff; **Δ** = defendant

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