

A plaintiff filed a federal diversity action against a corporate defendant and the same day mailed to the defendant's managing agent a notice of the complaint and two copies of a request to waive service. Sixty-one days later, after the defendant had failed to return the signed waiver request, answer, or otherwise plead, the plaintiff moved for entry of default and a default judgment. The plaintiff did not file proof of service.

Assume that any relevant state service law is the same as federal law.

Is the court likely to grant the motion?

- A. No, because the plaintiff failed to effect proper service of process. (57%)
- B. No, because the plaintiff failed to file proof of service. (25%)
- C. Yes, because the defendant should have returned the waiver request within 60 days of service. (8%)
- D. Yes, because the plaintiff mailed notice of the complaint as permitted by the Federal Rules of Civil Procedure. (8%)

Correct

57% Answered correctly

01 min, 31 secs Time Spent

2023 Version

Explanation:

Waiving service of process

(FRCP 4(d))

Request for waiver	<ul style="list-style-type: none">In writingAddressed to defendant (or authorized agent)Names court where complaint filedProvides copy of complaint, two waiver forms & prepaid means to return formInforms defendant about consequences of waiving & not waivingLists date request is sentSent via first-class mail or other reliable meansAllows 30 days (or 60 days for defendant abroad) from date sent for defendant to return waiver
Benefits of waiver	<ul style="list-style-type: none">Defendant's time to file answer extended to 60 days (or 90 days if abroad) from date sent
Consequences of failing to waive	<ul style="list-style-type: none">Defendant pays expenses of future service of processDefendant pays reasonable expenses of any motion required to collect service expenses (eg, attorney's fees)

FRCP = Federal Rule of Civil Procedure.

A plaintiff must provide the defendant with adequate notice of a lawsuit through [service of process](#)—ie, delivering a copy of the [summons and complaint](#). This process can be expensive and burdensome, so **defendants are encouraged**—but not required—**to waive service of process** upon the plaintiff's written request.

If the **defendant does not waive** service (as seen here), then the **plaintiff must** effect **proper service of process before** the **defendant must respond** to the complaint. But here, the plaintiff took no action to serve the defendant with process, so the defendant was not required to respond. Therefore, the court will likely deny the plaintiff's motion for entry of default and a default judgment.

(Choice B) The process server's [proof-of-service affidavit](#) must generally be filed when service was properly made in the U.S. and not waived. But failure to file such proof does not impact the service's validity.

(Choice C) A request for waiver of service must give a defendant in the U.S. at least 30 days after the request was sent to return the signed waiver. But since there is no requirement to return a waiver request, there is no deadline to return it.

(Choice D) A waiver request and proper service of process require that a *copy* of the complaint be provided to the defendant. Mere *notice* of a complaint is insufficient under the Federal Rules of Civil Procedure.

Educational objective:

A defendant is encouraged—but not required—to waive service of process by returning a signed waiver request. If a defendant does not do so, then the plaintiff must properly serve process before the defendant must respond to the complaint.

References

Fed. R. Civ. P. 4(d) (describing the process of waiving service of process).

Fed. R. Civ. P. 4(h) (explaining service of process on an organization in the United States).

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