

A partnership registered in State A sued a former employee domiciled in State A in a federal court in State A. The partnership claimed that the employee breached the noncompete provision of her contract, which resulted in a \$100,000 loss in revenue for the partnership. The partnership's members are all domiciled in State B.

The summons and complaint were served at the employee's apartment, where the process server handed the documents to the employee's 17-year-old roommate. The roommate neglected to give the documents to the employee, so the employee did not file an answer or any other response.

Thirty days later, the partnership asked the court clerk to enter the employee's default, and the clerk did so. The partnership then applied to the court for the entry of a default judgment. Upon receiving notice of the default-judgment hearing, the employee filed a motion to set aside the entry of default. In the motion, the employee argued that the noncompete provision was invalid.

If the court grants the employee's motion, what is the most likely explanation?

- A. The clerk erred by entering the employee's default.
- B. The court lacks subject-matter jurisdiction over the case because the parties are not diverse.
- C. The employee provided good cause for failing to timely respond.
- D. The employee was improperly served with process because the process server delivered process to the employee's roommate.

## Explanation:

A default occurs when a defendant fails to timely [serve an answer](#), which is generally due within 21 days after the defendant is served with process.\* When the plaintiff shows this failure to the court clerk, the clerk must enter the defendant's default into the record of the case (as the clerk did here) **(Choice A)**. However, a federal court can **set aside** an **entry of default for good cause**, which exists when:

- the defendant's failure to timely respond was the result of **excusable neglect**
- the defendant presented a meritorious defense *and*
- the plaintiff would **not be substantially prejudiced** if the case is reopened.

Here, the employee's failure to timely respond was the result of excusable neglect because the roommate did not give the employee the summons and complaint. The employee then presented a meritorious defense by arguing that the noncompete provision was invalid. Reopening the case would not substantially prejudice the partnership since it can still pursue its claim. Therefore, if the court grants the employee's motion to set aside the entry of default, the most likely explanation is that the employee provided good cause for failing to timely respond.

\*If the defendant files a pre-answer [FRCP 12 motion](#), the defendant must serve an answer within 14 days after notice of the court's denial of the motion. A default occurs if the defendant fails to serve an answer by this deadline.

**(Choice B)** The court does have subject-matter jurisdiction based on diversity. The amount in controversy is \$100,000 (exceeds \$75,000), and the parties are [citizens](#) of different states (ie, diverse) because the employee is domiciled in State A and the partnership's members are domiciled in State B.

**(Choice D)** A defendant-individual in the U.S. can be properly [served with process](#) by leaving the summons and complaint at the defendant's dwelling with a resident of suitable age and discretion—eg, the employee's 17-year-old roommate.

## Educational objective:

A federal court may set aside an entry of default for good cause, which exists when (1) the failure to timely respond was the result of the defendant's excusable neglect, (2) the defendant presented a meritorious defense, and (3) the plaintiff would not be substantially prejudiced if the case is reopened.

## References

- Fed. R. Civ. P. 55(c) (setting aside a default or a default judgment).
- 10A Charles Alan Wright et al., Federal Practice and Procedure § 2696 (4th ed. 2020) (explaining when a federal court will set aside an entry of default).

Copyright © UWorld. All rights reserved.