

A plaintiff has brought a federal diversity action against a defendant, alleging that the defendant defamed and inflicted emotional distress on the plaintiff. The plaintiff had the summons and complaint delivered to the defendant's home by the plaintiff's 18-year-old nephew. The nephew handed the documents to the defendant's 16-year-old daughter who resides there. She placed the documents on the kitchen table, and the defendant reviewed those documents later that week. After reading the complaint, the defendant could not determine what conduct the plaintiff was claiming had caused the emotional distress.

What is the defendant's best response to the plaintiff's complaint?

- A. File a motion for a more definite statement.
- B. File a motion for judgment on the pleadings.
- C. File a motion to dismiss for improper service of process.
- D. File a motion to strike the emotional distress claim.

## Explanation:

### FRCP 12 motions

**12(b)** Motion asserting any of the following defenses:

- Lack of subject-matter or personal jurisdiction
- Improper venue
- Insufficient process or service of process
- Failure to state claim upon which relief can be granted
- Failure to join required party

**12(c)** Motion for judgment on the pleadings

**12(e)** Motion for more definite statement in pleading

**12(f)** Motion to strike insufficient defense or immaterial matter from pleading

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

When a party believes that a **pleading** (eg, complaint) is **so vague or ambiguous** that the party **cannot reasonably draft a response**, the **party should file** an FRCP 12(e) **motion for a more definite statement**. If the court grants this motion because the pleading lacks the requisite **specificity**, the nonmovant must provide a more definite statement (eg, amended complaint) that will allow the movant to file a responsive pleading (eg, answer).

Here, the defendant could not determine what conduct the plaintiff was claiming had caused the emotional distress. Therefore, a motion for a more definite statement is the defendant's best response to the plaintiff's unclear complaint.

**(Choice B)** Under FRCP 12(c), a party may move for a judgment on the pleadings after the pleadings have closed—ie, once the plaintiff's complaint and the defendant's answer have been served. Since the defendant has not yet served an answer, a motion for judgment on the pleadings would be improper.

**(Choice C)** An individual can be **served with process** if the summons and complaint are delivered to the individual's dwelling and left with a resident of suitable age and discretion (16-year-old daughter). Process can be served by any person who is at least 18 years old and not a party to the suit (18-year-old nephew). As a result, a motion to dismiss for improper service of process would be unsuccessful.

**(Choice D)** A party may move to strike an insufficient defense or any redundant, scandalous, impertinent, or immaterial matter from an opposing party's pleading under FRCP 12(f). Since the plaintiff's complaint contains none of these matters, a motion to strike the emotional distress claim would not be the defendant's best response.

**Educational objective:**

A party should move for a more definite statement when a pleading is so vague or ambiguous that the party cannot reasonably draft a responsive pleading.

**References**

- Fed. R. Civ. P. 12(e) (motion for a more definite statement).

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