

A plaintiff brought a diversity action against a defendant in a federal court in State A to quiet title to a farm. The plaintiff attempted to serve the defendant with process through certified mail, but the letter was returned to the plaintiff marked "unclaimed." The plaintiff attempted service through certified mail a second time, but the letter was returned to the plaintiff in the same fashion. The plaintiff did not attempt to contact the defendant again. At trial, the defendant did not appear and defend. As a result, the court entered a default judgment in the plaintiff's favor.

Two months later, the defendant discovered the plaintiff on the farm and learned about the default judgment. The defendant immediately moved for relief from the default judgment in the federal court in State A on the ground that the plaintiff failed to provide him with adequate notice of the suit.

State A's rules of procedure permit service of process by certified or ordinary mail.

Will the federal court likely grant the defendant's motion for relief?

- A. No, because the plaintiff attempted to serve the defendant with process twice.
- B. No, because the plaintiff complied with State A's service-of-process rules.
- C. Yes, because the defendant did not receive actual notice of the lawsuit.
- D. Yes, because the plaintiff failed to take additional reasonable steps to provide notice.

Explanation:

Service-of-process requirements

Procedural rules (FRCP 4(e))	Process may be served on defendant-individual located in U.S. by: <ul style="list-style-type: none">• delivering process to defendant personally or authorized agent• leaving process at defendant's dwelling with resident of suitable age & discretion <i>or</i>• following rules of state where court sits or service is made
Due process	<ul style="list-style-type: none">• Notice must reasonably apprise defendant of pending suit & afford opportunity to present objections• If plaintiff knows defendant did not receive notice, plaintiff must take additional reasonable steps to provide notice

FRCP = Federal Rule of Civil Procedure.

A defendant can obtain **relief** from a default judgment when the defendant's failure to **timely serve an answer** was due to excusable neglect. Excusable neglect can arise when the defendant failed to receive adequate notice of the suit through **service of process** as required by procedural rules and **due process**.

FRCP 4 provides several procedures for serving process on a defendant-individual in the U.S., including:

- delivering process to the defendant personally (or to an agent authorized to receive process)
- leaving process at the defendant's dwelling with a resident of suitable age and discretion *or*
- following the rules of the state where the court sits or service is made.

Here, the plaintiff complied with the service-of-process rules for State A (where the federal court sits) by attempting to serve the defendant with process twice through certified mail. However, her attempt to provide adequate notice must also comply with due process.

Under this constitutional requirement, actual notice is not required (**Choice C**). Instead, notice must **reasonably apprise** the **defendant of the pending suit** and afford the defendant an **opportunity to present objections**. So if the plaintiff **knows** that the defendant **did not receive notice** (eg, because the letter was returned "unclaimed"), then the plaintiff must take **additional reasonable steps** to provide notice. The plaintiff here failed to take such steps, so the court will likely grant the defendant's motion for relief (**Choices A & B**).

Educational objective:

Notice, as required by due process, means that a defendant must be reasonably apprised of the pending suit and afforded an opportunity to present objections. So if the plaintiff knows the defendant did not receive notice through service of process, then the plaintiff must take additional reasonable steps to provide notice.

FRCP = Federal Rule of Civil Procedure.

References

- Jones v. Flowers, 547 U.S. 220, 234 (2006) (explaining that when the plaintiff knows that the defendant has not received notice, additional reasonable steps need to be taken to provide such notice).
- Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (stating that due process requires notice apprising the defendant of the action and affording an opportunity to be heard).

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