

A corporation has been the subject of several news reports charging that the pollution emitted by its factory endangers the health of hundreds of residents in a subdivision. The corporation filed an action in federal court against the residents to obtain a declaratory judgment that it complied with environmental regulations and is not responsible for any subsequent harm. A federal statute authorizes this suit.

The state in which the federal court is located permits service of process by mail or by publishing notice of the suit in a newspaper. The corporation obtained the name and address of each resident in the subdivision from the county tax assessor. To avoid the expense of mailing service to each resident individually, the corporation published notice of the suit in the subdivision's community newspaper pursuant to the state's procedural rules.

Did the corporation properly serve the residents with process?

- A. No, because service by publication was unreasonable since the corporation knew the name and address of each resident.
- B. No, because the residents were not personally served with process.
- C. Yes, because service by publication was reasonable due to the expense associated with mailing service to each resident.
- D. Yes, because the newspaper publication provided the residents with reasonable notice of the action.

## Explanation:

A plaintiff must provide the defendant with **adequate notice** of a lawsuit through **service of process**, which must comply with both **procedural rules** and **due process**. In a federal court action, Federal Rule of Civil Procedure 4 permits service of process on a defendant-individual located in the U.S. by any of the following methods:

- Personal service – when process is delivered in person to the defendant
- Substituted service – when process is delivered to the defendant's agent or left at the defendant's dwelling with a resident of suitable age and discretion
- State procedural rules – when process is served pursuant to the rules of the state where the court sits or service is attempted (as seen with the newspaper publication here) **(Choice B)**

However, attempted service must also satisfy due process. Under this constitutional requirement, service must **reasonably apprise** the **defendant of the pending suit** so that the defendant may appear and present objections. This means that the plaintiff must notify the defendant of the lawsuit by the **most reasonable means** under the circumstances.

**Service by publication** is the most reasonable means in the **rare instance** when the defendant's **identity or address** is **unknown and unobtainable**. But if the plaintiff knows or can reasonably obtain this information, a more reasonable means of service must be used (eg, service by mail). Here, the corporation had obtained the residents' names and addresses from the county tax assessor, so service by publication was unreasonable. Therefore, the residents were *not* properly served with process **(Choices C & D)**.

## Educational objective:

A plaintiff must provide the defendant with adequate notice of a lawsuit that reasonably appraises the defendant of the suit so that the defendant may appear and present objections. Service by publication is permitted only when the defendant's identity or address is unknown and unobtainable.

## References

- Fed. R. Civ. P. 4(e) (service of process on individual in the United States).
- *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 319 (1950) (holding that a plaintiff cannot provide notice by publication when the identities and addresses of the defendants are known or easily ascertainable).
- 62B Am. Jur. 2d Process § 206 (2020) (explaining service by publication).

## Service of process under state procedural rule (reasonable notice under due process)

Identity and address known / obtainable  
= Service by publication unconstitutional



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Identity and address unknown / unobtainable  
= Service by publication constitutional

