

An investor from State A filed an action against his State B stockbroker in federal court in State A. The summons and complaint were served at the stockbroker's office in State B, where the process server handed the documents to the stockbroker's administrative assistant.

The stockbroker has answered the complaint, asserting the defense of improper service of process. Assume that both states' requirements for service of process are identical to the requirements of the Federal Rules of Civil Procedure.

Is the court likely to dismiss the action for improper service of process?

- A. No, because service was made on a person of suitable age found at the stockbroker's place of employment.
- B. No, because the stockbroker waived her claim for improper service of process by asserting it in her answer.
- C. Yes, because an individual defendant may not be served by delivering process to a third party found at the defendant's place of employment.
- D. Yes, because the process of State A courts is not effective in State B.

Explanation:

A defendant receives notice of a lawsuit through service of process—ie, delivery of a [summons and complaint](#). Under FRCP 4, a defendant who is an individual in the U.S. can be **properly served with process** within 90 days after the original complaint* is filed by:

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

Here, the service-of-process requirements for State A (where the court is located) and State B (where service was made) are identical to those of FRCP 4. But the process server delivered the summons and complaint to the stockbroker's administrative assistant—not to the stockbroker personally or to her authorized agent. And though the assistant was likely of suitable age and discretion, the documents were left at the stockbroker's office—not her dwelling **(Choice A)**. Therefore, the court will likely dismiss the action for improper service of process.

*Copies of other pleadings (eg, amended complaint, answer), motions, and other papers must also be served (ie, delivered) on the opposing party; however, a summons is not required and the deadline for service is governed by other procedural rules.

(Choice B) A claim for improper service of process is [waived](#) if it is not asserted in a pre-answer motion or answer, whichever occurs first. Therefore, the stockbroker preserved this claim by asserting it in her answer since no pre-answer motion had been filed.

(Choice D) Service of process is proper if it complies with the rules of the state where service is made or where the court is located—even when service is made in a different state. Therefore, service of process under the rules of State A courts can be effective in State B.

Educational objective:

Process can be served by (1) following the rules of the state where the court is located or where service is made, (2) delivering the summons and complaint to the defendant personally (or to his/her authorized agent), or (3) leaving the summons and complaint at the defendant's dwelling with a resident of suitable age and discretion.

FRCP = Federal Rule of Civil Procedure

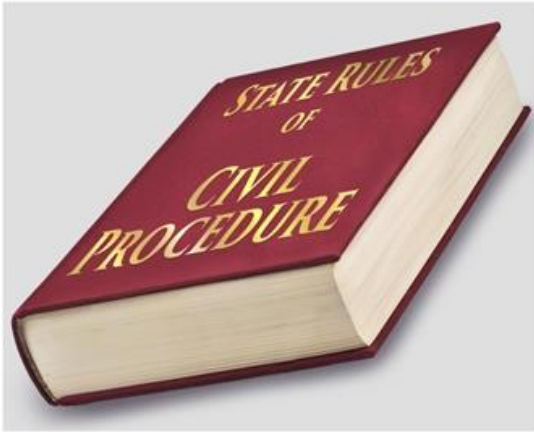
References

- Fed. R. Civ. P. 4(e) (serving process on an individual in the U.S.).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.

Serving process on individual



Following state rules



Delivery to defendant



Delivery to defendant's
authorized agent



Delivery to suitable resident
at defendant's dwelling