

A plaintiff domiciled in State A has brought a federal diversity action in State A against a defendant domiciled in State B, seeking damages for injuries the defendant allegedly caused the plaintiff in State B. The defendant has never been to State A and has no connections there. The defendant's attorney knows that the defendant was properly served but does not believe that the State A court has personal jurisdiction over her.

What is the best way for the attorney to raise the argument that the court lacks personal jurisdiction over the defendant?

- A. Move for discovery on the issue of personal jurisdiction.
- B. Move for judgment on the pleadings, seeking dismissal of the action for lack of personal jurisdiction.
- C. Move for sanctions against the plaintiff and his attorney for filing the action in a court that has no personal jurisdiction over the defendant.
- D. Move to dismiss the action for lack of personal jurisdiction based on the complaint allegations and an affidavit from the defendant about her lack of connection to State A.

## 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.

The defendant's attorney believes that the State A federal court lacks personal jurisdiction over the defendant. A defendant\* can assert a **lack of personal jurisdiction** in an FRCP 12(b) **pre-answer motion to dismiss** or an answer (whichever occurs first). A pre-answer motion can use the allegations in the **pleadings** and/or an attached **affidavit** that shows why personal jurisdiction does not exist—eg, that the defendant has no connection to the forum state. Therefore, this motion is the best way for the attorney to challenge the court's personal jurisdiction.

\*Personal jurisdiction is always focused on the defendant because the plaintiff consents to personal jurisdiction by filing the suit in that court.

**(Choice A)** Lack of personal jurisdiction must be raised in a pre-answer motion or answer (whichever occurs first); otherwise this challenge is waived. Since a motion for discovery is not a pre-answer motion, it is not an effective means to challenge personal jurisdiction.

**(Choice B)** A party may move for judgment on the pleadings after the pleadings have closed—ie, once the plaintiff's complaint and the defendant's answer have been served. Since a personal-jurisdiction challenge must be raised before the pleadings have closed, this motion is improper.

**(Choice C)** **Sanctions** may be imposed against a party, attorney, or law firm for filing the action in a court with no personal jurisdiction over the defendant. However, the defendant must first move to dismiss the action and show that the court lacks personal jurisdiction.

**Educational objective:**

A defendant can raise a lack of personal jurisdiction in a pre-answer motion to dismiss or an answer (whichever occurs first). The motion can be supported by the allegations in the pleadings or an attached affidavit.

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

### **References**

- Fed. R. Civ. P. 12(b) (pre-answer motions).

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