

A university student, a citizen of State A, believes that her university violated federal law when it eliminated funding for the women's varsity volleyball team. She has sued the university, a nonprofit corporation located and incorporated in State B, and the university's athletic director, a citizen of State B, in federal court in State B.

What is the best method of serving the defendants?

- A. Service as required by State B's rules of civil procedure.
- B. Service by a process server's leaving copies of the summons and complaint with secretaries in the respective offices of the athletic director and the university president.
- C. Service by emailing copies of the summons and complaint to the athletic director and the university president.
- D. Service by the student herself on the athletic director and the university president.

## Explanation:

### Methods of serving process in U.S.

- |                     |   |
|---------------------|---|
| <b>Individual</b>   | <ul style="list-style-type: none"><li>• Following state law where district court is located or where service is made</li><li>• Personally serving defendant with summons &amp; complaint</li><li>• Leaving summons &amp; complaint at defendant's dwelling with someone of suitable age &amp; discretion who resides there</li><li>• Delivering summons &amp; complaint to defendant's authorized agent</li></ul> |
| <b>Organization</b> | <ul style="list-style-type: none"><li>• Following state law where district court is located or where service is made</li><li>• Delivering summons &amp; complaint to officer, managing or general agent, or authorized agent &amp; mailing those documents to defendant if required by statute</li></ul>  |

Due process prohibits a court from adjudicating a defendant's rights before the defendant has received **proper notice** of the plaintiff's complaint. A defendant receives proper notice when someone who is at least 18 years old and not a party to the suit serves the defendant with a **summons and complaint**. And under Federal Rule of Civil Procedure (FRCP) 4, **any defendant** (an individual or organization) can be served for a federal suit by following the **state law for serving process** in the state **where the court is located** or where service is made.

Here, the student sued the university (organization) and its athletic director (individual) in federal court in State B. Since the defendants can be served under the civil procedure rules of State B (where the court is located), this is the best method of serving both defendants.

**(Choice B)** Individuals and organizations can be served by delivering a copy of the summons and complaint to an agent authorized to receive service on the defendant's behalf. But since there is no indication that the secretaries were authorized agents of either defendant, this is not the best method for serving the defendants.

**(Choice C)** Service of process by email is not expressly authorized under FRCP 4. Therefore, absent some indication that State B's rules allow this method of service, email is not the best method of serving the defendants.

**(Choice D)** The student herself cannot serve process because she is a party to the lawsuit. However, any nonparty who is at least 18 years old can serve process. If service was not **waived** and occurred within the U.S., the process server must typically file a **proof of service affidavit**.\*

\*Service in a foreign country can be proved (1) pursuant to an applicable treaty or convention, (2) by a receipt signed by the addressee, or (3) by other evidence that satisfies

the court. However, failure to prove service in the U.S. or abroad does not affect the validity of the service.

**Educational objective:**

Any defendant (individual or organization) can be served by (1) following the service-of-process laws of the state where the court is located or where service is made or (2) delivering a copy of the summons and complaint to an agent authorized to receive service on the defendant's behalf.

**References**

- Fed. R. Civ. P. 4(c), (e), (h) (service of process upon an individual and an organization).

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