

An entrepreneur from State A sued a company incorporated and headquartered in State B in federal court in State B to recover \$100,000 in damages. The entrepreneur alleged that the company breached their contract by disclosing confidential information supplied by the entrepreneur's consultant, a U.S. citizen who resides in a foreign country. The company denies receiving this information from the consultant.

The entrepreneur asked the consultant to voluntarily attend a deposition or submit an affidavit, but he refused. The entrepreneur then moved for, and the court issued a subpoena requiring, the consultant's appearance at a deposition in State B. The consultant was served with the subpoena by mail in accordance with an international agreement signed by the foreign country. The subpoena contained the contents required by federal rules and stated that the consultant must pay his own expenses to attend the deposition.

What is the consultant's best argument that he does not need to comply with the subpoena?

- A. The consultant's testimony is unnecessary in the interest of justice.
- B. The court lacks authority to issue a subpoena for a person in a foreign country.
- C. The entrepreneur failed to pay the consultant's travel and attendance expenses.
- D. The entrepreneur used an improper method to serve the subpoena.

Explanation:

A **subpoena** is a written court order that generally commands a person to testify at a trial, hearing, or deposition. Federal courts have the authority to subpoena **U.S. citizens in a foreign country*** (eg, the consultant) pursuant to special rules governing the issuance and service of such subpoenas **(Choice B)**. Such a subpoena is **validly issued when it:**

- contains the **required contents** (as seen here)
- is issued from the court where the action is pending (as seen here) *and*
- seeks testimony that is (1) **necessary in the interest of justice** and (2) **impractical to obtain** in an admissible form without the witness's personal appearance.

Here, the consultant's testimony about the disclosure of confidential information is necessary in the interest of justice because it is the basis for the entrepreneur's breach-of-contract claim **(Choice A)**. And it is impractical to obtain this testimony without the consultant's appearance because he refused to voluntarily attend a deposition or submit an affidavit. As a result, the subpoena was validly issued.

The entrepreneur then had to validly serve the subpoena on the consultant by:

- using a **method of service** that the federal rules allow for service of process **in a foreign country** (eg, pursuant to an international agreement) *and*
- **paying** the consultant's **travel and attendance expenses**.

Here, the consultant was served with the subpoena by mail. This is a proper method of service since an international agreement signed by the foreign country permits such service **(Choice D)**. However, the subpoena was invalidly served because the entrepreneur failed to pay the consultant's travel and attendance expenses. As a result, this is the consultant's best argument that he does not need to comply with the subpoena.

*A federal court may not issue subpoenas to foreign citizens in foreign countries since they owe no allegiance to the U.S.

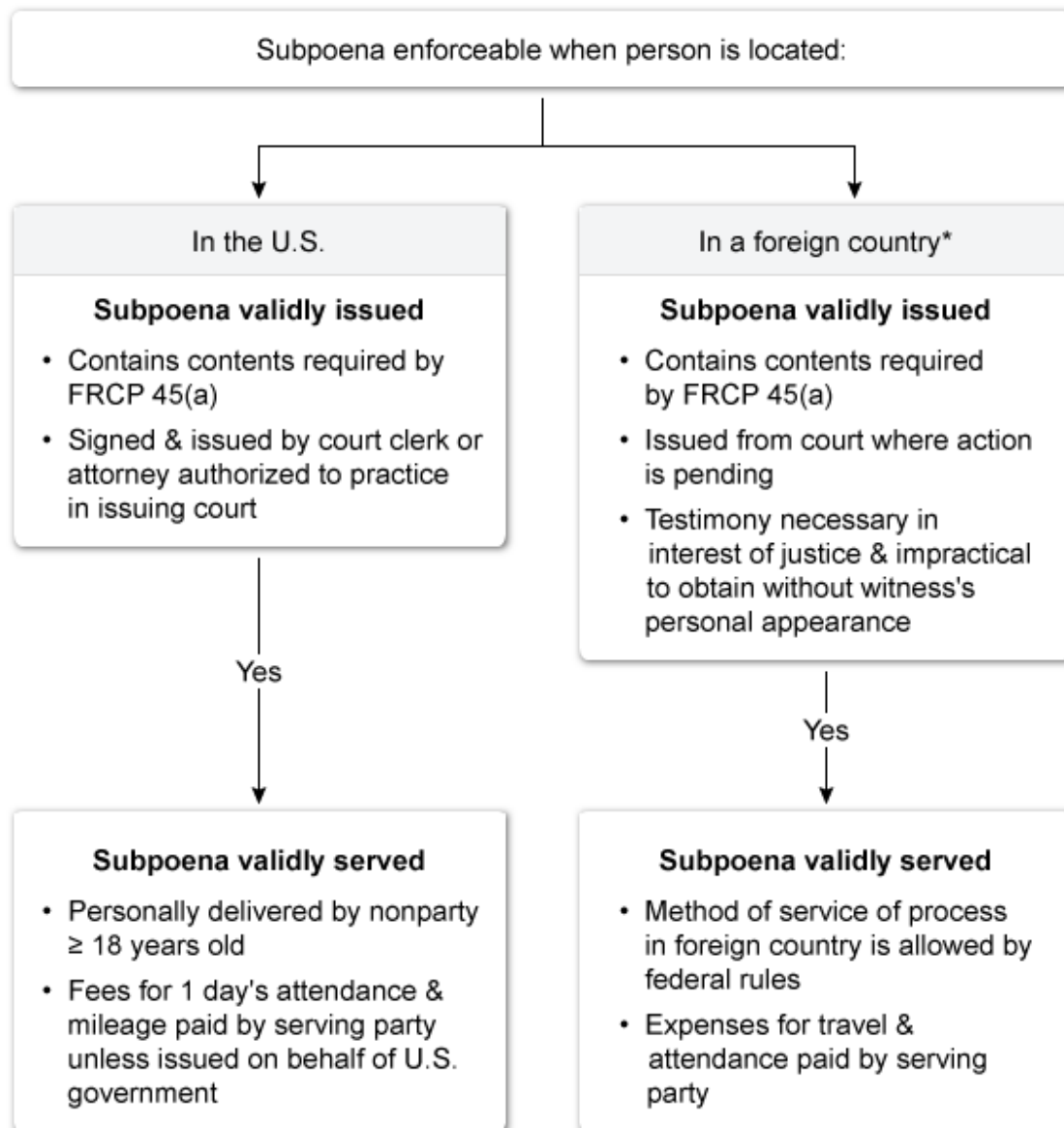
Educational objective:

Federal courts can subpoena U.S. citizens in a foreign country when their testimony is necessary in the interest of justice and impractical to obtain by other means. Such subpoenas are validly served when the serving party (1) uses a method of service allowed by the federal rules and (2) pays the citizen's attendance and travel expenses.

References

- 28 U.S.C. § 1783 (subpoena of person in foreign country).
- 9A Charles Alan Wright et al., Federal Practice and Procedure § 2462 (3d ed. 2020) (explaining the requirements to issue and serve subpoenas to U.S. citizens in foreign countries).

Subpoenaing person in the U.S. or foreign country



*A non-U.S. citizen may be subpoenaed in the U.S. but not in a foreign country.

FRCP = Federal Rule of Civil Procedure.

©UWorld