

A man was fired from a company for refusing to work on Saturday mornings because his religious beliefs require him to attend worship services during that time. The man sued the company in federal court in State A for violating a federal law that prohibits religious discrimination in the workplace. State A's rules of procedure permit service of process on an organization by leaving a copy of the summons and complaint at the organization's headquarters with an employee of suitable age and discretion. The company has designated its receptionist as an agent authorized to receive service of process on its behalf.

The man hired an 18-year-old process server to deliver a copy of the summons and complaint to the company's headquarters. The receptionist was not in the office on the day the process server arrived, so the process server left the summons and complaint with a 16-year-old employee who was filling in for the receptionist.

The company filed an answer, which included a motion to dismiss for improper service of process.

Will the court likely grant the motion?

- A. No, because process was served in conformance with State A's rules of service.
- B. No, because the company waived its claim for improper service of process.
- C. Yes, because process was not delivered to the company's authorized agent.
- D. Yes, because the process server was not of suitable age to serve process.

Explanation:

Methods of serving process on defendant-organization

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| In United States | <ul style="list-style-type: none">• Follow state law where district court is located or where service is made• Deliver summons & complaint to officer or managing / general / authorized agent & mail to defendant if required by statute |
| In foreign country | <ul style="list-style-type: none">• Follow international agreement reasonably calculated to give notice• If no international agreement & not prohibited by federal law:<ul style="list-style-type: none">– follow foreign country's rules– serve as foreign country directs in response to letter rogatory <i>or</i>– unless prohibited by foreign country, serve by mail with request for signed return receipt• Follow court order, unless prohibited by international agreement |

Before a federal district court can adjudicate a suit, the plaintiff must properly **serve the defendant with process**—ie, deliver a copy of the [summons and complaint](#). Under Federal Rule of Civil Procedure (FRCP) 4(h), a **defendant-organization** can be properly served in the United States by either:

- following the service-of-process rules of the state where the court is located (ie, the forum state) or where service is made *or*
- delivering process to an officer, managing or general agent, or agent authorized by appointment or law to receive service AND, if required by statute, mailing process to the defendant.

Here, State A (the forum state) permits service of process on an organization by leaving a copy of the summons and complaint at the organization's headquarters with an employee of suitable age and discretion. Such an employee is one who is old enough to possess the limited capacity necessary to comprehend the situation (eg, a 16-year-old employee). Therefore, the court will likely deny the company's motion to dismiss.

(Choice B) Under FRCP 12(h), a defendant [waives](#) the defense that process was improperly served if it is not asserted in a pre-answer motion or the defendant's answer—whichever occurs first. Here, the company did not waive this defense because it asserted the defense in its answer and no pre-answer motion had been filed.

(Choice C) Although process was not delivered to the receptionist, the company's authorized agent for service of process, service was still valid since it complied with the forum state's law.

(Choice D) Under FRCP 4(c), process can be delivered by any person who is *at least* 18 years old and not a party to the suit (eg, the 18-year-old process server).

Educational objective:

An organization can be served by (1) following the service-of-process rules of the state where the district court is located or where service is made *or* (2) delivering process to an officer or agent authorized to receive it and, if required by statute, mailing process to the organization.

References

- Fed. R. Civ. P. 4(h) (service on organizations).

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