

A woman brought a diversity action against a man in a federal district court in State A to recover damages for an accident that occurred in State B. The woman hired a process server, who delivered a copy of the summons and complaint to the man's wife at their home. The man filed an answer in which he moved to dismiss the woman's action for improper service of process.

Laws in State A and State B require that service of process be personally delivered to the defendant, and their choice-of-law rules provide that a court must apply the law of the state where the injury occurred.

Should the court grant the man's motion to dismiss?

- A. No, because the man waived this defense by failing to assert it in a pre-answer motion.
- B. No, because the man was served in accordance with federal law.
- C. Yes, because the man was not served in accordance with State A law.
- D. Yes, because the man was not served in accordance with State B law.

Explanation:

Choice of law in federal court

Type of jurisdiction	Applicability	Substantive issues	Procedural issues
Federal question	<ul style="list-style-type: none">Claim arises under U.S. Constitution, federal law, or treaty	Apply federal law	
Diversity	<ul style="list-style-type: none">Amount in controversy > \$75,000 <p>AND</p> <ul style="list-style-type: none">Parties are citizens of different states	Apply state law*	Apply federal law

*Federal court must follow choice-of-law rules of state where it sits.

A federal court sitting in diversity must apply **state law** to **substantive issues** and **federal law** to **procedural issues**. Procedural issues include filing deadlines, discovery rules, and service-of-process requirements. Therefore, federal law (not state law) governs service of process **(Choices C & D)**. **FRCP 4(e)** provides that a plaintiff can **properly serve process** on a defendant-individual in the United States by:

- following the rules of the state where the court sits or service is made
- having process delivered to the defendant personally (or to an agent authorized to receive process) *or*
- having process delivered to the defendant's dwelling and left with a resident of suitable age and discretion.

Here, the process server delivered a copy of the summons and complaint to the man's wife at their home. The wife is of suitable age and discretion since she is old enough to possess the limited capacity necessary to comprehend the situation. Therefore, service of process was proper under federal law, and the court will likely deny the man's motion to dismiss the woman's action.

(Choice A) Under FRCP 12(h), a defendant **waives** an improper-service-of-process defense if it is not asserted in a pre-answer motion or the defendant's answer—whichever occurs first. Here, the man did not waive this defense because he asserted it in his answer and no pre-answer motion had been filed.

Educational objective:

In a federal diversity action, the court must apply state law to substantive issues and federal law to procedural issues. Therefore, federal service-of-process rules always apply in federal court.

FRCP = Federal Rule of Civil Procedure

References

- *Miss. Publ'g Corp. v. Murphree*, 326 U.S. 438, 444–45 (1946) (explaining that serving process is a procedural issue that is governed by federal law).
- Fed. R. Civ. P. 4(e) (service of process on an individual located in the United States).

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