

A federal government employee, a citizen of State A, was driving home after his shift in State B when he lost control of his automobile and hit a pedestrian, a citizen of State C. The employee has never been to State C.

The pedestrian filed a negligence suit against the employee in federal court in State C to recover \$80,000 in damages. The employee filed a motion to dismiss the action based on improper venue. The pedestrian responded that venue was proper in State C, where she resides, because the employee works for the federal government.

If the court grants the employee's motion, what is the likely explanation?

- A. A federal government employee cannot be sued where the plaintiff resides.
- B. The employee must be sued in State A, where he resides.
- C. The pedestrian sued the employee in his individual capacity.
- D. The suit does not arise under a federal statute.

Explanation:

Proper venue for suit against federal officer or employee

Official capacity

Special venue rules permit suit in district where:

(recovery from government)

- any Δ resides
- substantial portion of events occurred or property located
- π resides if no real property involved

Individual capacity

General venue statute permits suit in district where:

(recovery from officer/employee)

- any Δ resides, if all Δ s reside in same state
- substantial portion of events occurred or property located
- any Δ subject to personal jurisdiction if neither of above applies

π = plaintiff; Δ = defendant.

Venue refers to the [federal judicial district](#) where a case may be heard. When a plaintiff sues a **federal officer or employee**, proper venue depends on whether the defendant is sued in his/her official or individual capacity. When an officer or employee is sued in an **official capacity**, recovery is sought from the federal government and **special venue rules** apply. Under one such rule, venue is proper where the plaintiff resides.

In contrast, when an officer or employee is sued in an **individual capacity**, recovery is sought from the officer or employee. In these suits, the **general venue statute** applies, and venue is proper only where:

- any defendant [resides](#), so long as all defendants reside in the same state (residency-based venue)
- a substantial portion of the events giving rise to the suit occurred (events-based venue) or a substantial part of the property at issue is located (property-based venue) *or*
- any defendant is subject to the court's personal jurisdiction, but only if neither of the above provisions applies (fallback provision).

Here, the pedestrian (plaintiff) sued the federal employee (defendant) in State C, where the pedestrian resides. Therefore, venue would only be proper in State C if the employee was sued in his *official* capacity (**Choice A**). So, if the court dismisses the action for improper venue, it is likely because the pedestrian sued the employee in his *individual* capacity.

(Choice B) The employee could have been sued in State A, where he resides. However, he also could have been sued in State B, where the accident giving rise to the suit occurred.

(Choice D) The fact that the suit does not arise under a federal statute relates to [subject-matter jurisdiction](#), not venue. Additionally, subject-matter jurisdiction exists through diversity jurisdiction since the employee and pedestrian are citizens of different states and the amount in controversy exceeds \$75,000.

Educational objective:

When a federal officer or employee is sued in his/her official capacity, *special* venue rules apply—eg, venue is proper where the plaintiff resides. However, the *general* venue statute applies when a federal officer or employee is sued in his/her individual capacity.

References

- 28 U.S.C. § 1391(e)(1) (proper venue for federal officer or employee sued in official capacity).
- *Stafford v. Briggs*, 444 U.S. 527, 542 (1980) (holding that the general venue statute applies when a federal officer or employee is sued in his/her individual capacity).