

A photographer sued a foreign publisher in a federal district court in State A for copyright infringement. The photographer followed the foreign country's service of process rules to serve the publisher with a copy of the summons and complaint. The publisher has never been to State A and conducts no business there.

The publisher filed a pre-answer motion to dismiss the case for improper service of process. The district court denied this motion. Twelve days after receiving notice of the denial, the publisher filed and served an answer that included a motion to dismiss the case for lack of personal jurisdiction.

Is the court likely to grant the publisher's motion?

- A. No, because the publisher failed to file and serve his answer within 10 days after receiving notice of the court's denial of his pre-answer motion.
- B. No, because the publisher waived any objection to personal jurisdiction.
- C. Yes, because the publisher has never physically traveled to State A and conducts no business there.
- D. Yes, because the publisher properly filed and served his answer.

Explanation:

Waiver of defenses

Defenses	Waiver
<ul style="list-style-type: none">• Lack of subject-matter jurisdiction	Never waived
<ul style="list-style-type: none">• Lack of personal jurisdiction• Improper venue• Insufficient process or service of process	Waived if not asserted in pre-answer motion or answer (whichever occurs first)
<ul style="list-style-type: none">• Failure to state claim• Failure to join required party	Waived if not asserted before end of trial
<ul style="list-style-type: none">• All other legal defenses	Waived if not asserted in answer or amended answer

Personal jurisdiction is a court's authority over the parties or property before it. One way to establish **personal jurisdiction** is through the parties' consent. A plaintiff consents to the court's jurisdiction by filing the complaint in that court. In contrast, a **defendant can consent** in any of the following ways:

- **Express** consent – by contractually agreeing to the court's jurisdiction (eg, forum-selection clause)
- **Implied** consent – by engaging in an activity that the forum state has a substantial interest in regulating (eg, driving on public roads)
- **Waiver** – by **failing** to assert a **personal-jurisdiction objection** in a pre-answer motion or answer, whichever occurs first

Here, the publisher filed a pre-answer motion to dismiss for improper* service of process. But he previously waived any objection to personal jurisdiction by failing to assert this objection in his pre-answer motion. As a result, the publisher consented to the court's jurisdiction, and the court will likely deny his motion to dismiss.

*Service of process is proper here because a foreign defendant can be served by following the foreign country's rules for service of process.

(Choices A & D) If the defendant files a pre-answer motion, the defendant must file and **serve an answer** within 14 days after receiving notice of the court's denial or postponement of that motion—as the publisher did here. Nevertheless, the publisher waived his personal-jurisdiction defense by failing to assert it in his pre-answer motion.

(Choice C) The fact that the publisher has never physically traveled to State A and conducts no business there shows that the court cannot establish personal jurisdiction over him through [specific jurisdiction](#). However, it can still establish personal jurisdiction through the publisher's consent.

Educational objective:

A court can acquire personal jurisdiction through the defendant's consent—ie, express consent, implied consent, or waiver. A defendant waives a personal-jurisdiction objection by failing to assert it in a pre-answer motion or answer, whichever occurs first.

References

- Fed. R. Civ. P. 12(h)(1) (waiver of personal-jurisdiction defense).