

A beneficiary of a trust, who is a citizen of State A, has sued the trustee in federal court in State A for failing to correctly distribute the income from the trust, seeking an accounting. The trustee was personally served with process and the complaint by the beneficiary's attorney while the trustee was vacationing in State A. The trustee is a citizen of State B, and the accounts that are the subject of the trust are located in State B.

What is the trustee's best response to the complaint?

- A. Answer the complaint and counterclaim for abuse of process.
- B. File an action in a State B court and move to enjoin the State A action.
- C. Move to dismiss for improper service by the attorney.
- D. Move to dismiss for improper venue.

Explanation:

Venue

Proper venue

Case may be brought in any federal district where:

(28 U.S.C. § 1391)

- any defendant resides, if defendants all reside in same state
- substantial part of events giving rise to claim occurred or property at issue is located
- any defendant is subject to court's personal jurisdiction (if neither of the above provisions applies)

Transfer from proper venue

When venue is proper, district court may transfer case to any other proper venue for convenience of parties/witnesses & in interest of justice

(28 U.S.C. § 1404)

Transfer or dismissal from improper venue

When venue is improper, district court must either:

(28 U.S.C. § 1406)

- dismiss case
- transfer case to proper venue (if interest of justice requires)

Venue can be established in any federal judicial district where:

- any **defendant resides** (only applies when all defendants reside in the same state)
- a substantial part of the **events** that gave rise to the suit **occurred** or a substantial part of the **property at issue is located** *or*
- any defendant is subject to the court's personal jurisdiction (only applies if neither of the above provisions applies).

Here, the trustee resides and the trust accounts are located in State B. Additionally, the events giving rise to the suit likely occurred in State B since that is where the trust is administered. This means that venue is proper in State B—not State A, where the suit was filed. Therefore, the trustee's best response is to move to dismiss for improper venue.

(Choice A) Abuse of process is a tort claim alleging that a party intentionally misused the legal process for an ulterior, improper purpose. Since there is no indication that the beneficiary sued the trustee for an improper purpose, a counterclaim for abuse of process is not the trustee's best response.

(Choice B) If the trustee filed an action in State B, the State B court would only enjoin an action in another court in the extremely rare circumstance in which the party seeking the injunction has no adequate alternative remedy. But here, the trustee does not need

injunctive relief since the trustee could raise the same issues in the State A action as in a State B action.

(Choice C) Service of process is proper if it is personally delivered to the defendant by a person who is at least 18 years old and *not a party* to the suit (eg, the beneficiary's attorney).

Educational objective:

Venue is proper in any district where (1) any defendant resides, if all defendants reside in the same state, (2) a substantial part of the events giving rise to the suit occurred or the property at issue is located, or (3) any defendant is subject to the court's personal jurisdiction, if the first two provisions do not apply.

References

- 28 U.S.C. § 1391(b) (proper venue).

Copyright © 2014 by the National Conference of Bar Examiners. All rights reserved.

Copyright © UWorld. All rights reserved.