

A firm incorporated and headquartered in State A sued its competitor from State B in a State A state court. The firm sought \$100,000 for the competitor's defamatory statements about the firm's business practices. The complaint did not include a jury demand. Under State A law, a party must request a jury trial in its initial pleading or the right to a jury is waived.

Fifteen days after the competitor served its answer, the competitor removed the case to federal court on the basis of diversity jurisdiction. Ten days after being served with the notice of removal, the firm served a written demand for a jury trial.

Which of the following findings will the court likely make regarding the firm's demand?

- A. The firm preserved its right to a jury trial by asserting a legal claim in the complaint.
- B. The firm preserved its right to a jury trial by timely serving its demand for a jury.
- C. The firm waived its right to a jury trial by failing to assert the demand in state court.
- D. The firm waived its right to a jury trial by serving the demand more than 14 days after service of the competitor's answer.

Explanation:

All civil litigants in federal court have the constitutional **right to a jury trial** for any legal claim in which the amount in controversy exceeds \$20. A party generally preserves this right by demanding a jury trial within 14 days after the last pleading (usually the defendant's answer) is served. However, in an **action removed from state to federal court**, a party **preserves this right** by either:

- **demanding** a jury trial **in state court *before removal* or**
- **serving** a jury trial demand within **14 days *after filing* or *being served*** with the **notice of removal**—so long as all necessary pleadings (ie, the complaint and answer) had been served before removal.*

Here, the firm did not demand a jury trial in state court before the competitor removed the case to federal court. However, the complaint and answer were served before removal and the firm timely served its demand for a jury trial 10 days after being served with the competitor's notice of removal. As a result, the federal court will likely find that the firm preserved its jury trial right **(Choices C & D)**.

*If the necessary pleadings were not served before removal, then the general deadline for demanding a jury—ie, 14 days after the last pleading is served—applies.

(Choice A) The firm has the right to a jury trial because its complaint asserted a legal claim—ie, a claim that seeks a monetary remedy—in which the \$100,000 amount in controversy far exceeds the \$20 threshold. However, the firm may only exercise this right if it made a timely demand.

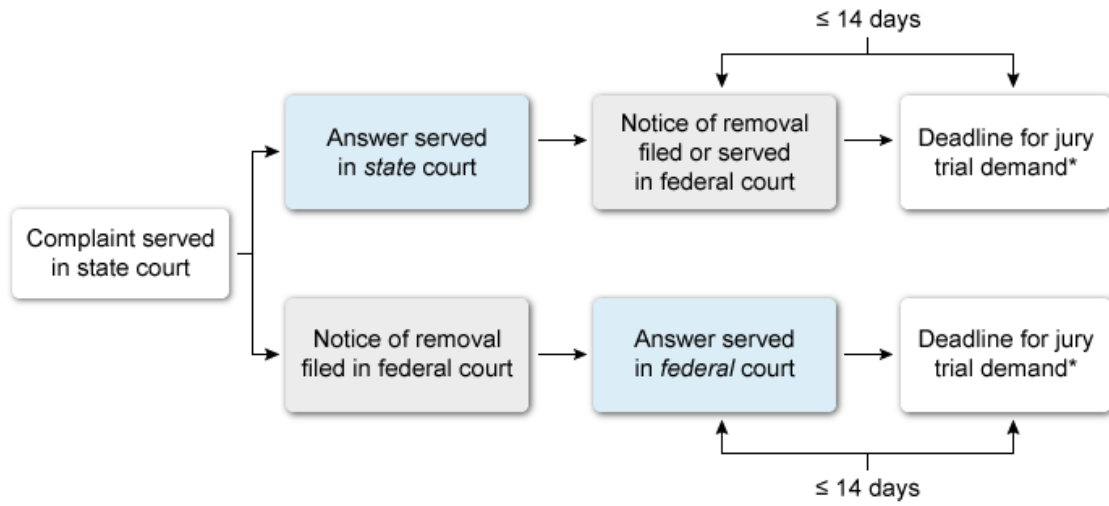
Educational objective:

In a removal action, a party preserves its right to a jury trial by (1) demanding a jury in state court before removal or (2) serving a jury trial demand within 14 days after filing or being served with the notice of removal, so long as all necessary pleadings had been served before removal.

References

- Fed. R. Civ. P. 81(c)(3) (jury trial demand in removal action).
- 9 Charles Alan Wright et al., Federal Practice and Procedure § 2319 (3d ed. 2020) (explaining how to properly demand a jury trial in an action removed from state to federal court).

Jury trial demand in removal action



*If the forum state does not require a jury trial demand, the parties need not make such a demand unless the court orders them to do so.
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