

Two siblings inherited their \$250,000 family home located in State A after their parents died in a car accident. The brother is 20 years old and lives in State A. The sister is 13 years old and now lives with her uncle, who has not yet been appointed her legal guardian. The brother wants to sell the home, while the uncle wants to use the home as a rental property.

The brother filed a lawsuit against his sister in a federal court in State A, requesting that the court order the sale of the home and split the proceeds between the children. The brother hired a process server, who hand-delivered a copy of the summons and complaint to the uncle at his apartment in State B.

A State A statute provides that process may be served on a minor by "leaving a copy of the summons and complaint with the minor's parent or legally appointed guardian." A State B statute allows service of process on a minor by "leaving a copy of the summons and complaint with the minor's parent or legally appointed guardian, an adult family member with whom the minor resides, or a married-minor's adult spouse."

The sister's lawyer filed a motion to dismiss the suit for insufficient service of process.

Will the court likely grant the motion?

- A. No, because the brother complied with the State B service-of-process statute.
- B. No, because the federal rules allow a family member to receive process on a minor's behalf.
- C. Yes, because minors cannot be sued in federal court.
- D. Yes, because the brother did not comply with the State A service-of-process statute.

Explanation:

Special service-of-process rules

Incompetent or minor	Plaintiff must follow rules of state where service is made
Federal government/agency	<p>Plaintiff must deliver summons & complaint to all of the following:</p> <ul style="list-style-type: none">• (1) U.S. attorney for district where action is brought or designated employee <i>or</i> (2) civil-process clerk at U.S. attorney's office via registered or certified mail• U.S. Attorney General via registered or certified mail AND• agency or officer whose conduct is challenged via registered or certified mail
Foreign government	<p>Plaintiff must deliver summons & complaint:</p> <ul style="list-style-type: none">• by special arrangement between plaintiff & foreign state• if no special arrangement, by international convention• if no convention, by sending to head of ministry of foreign affairs via mail requiring signed receipt OR• if no notice by mail within 30 days, by sending two copies to U.S. Secretary of State via mail requiring signed receipt
State or local government	<p>Plaintiff must either:</p> <ul style="list-style-type: none">• deliver notice to chief executive officer OR• follow rules of state where government is located

A plaintiff must give a defendant **notice of a lawsuit** by properly **serving the defendant** with a **summons and complaint** (ie, service of process). Like all defendants located in the U.S. who are sued in federal court, a minor or legally incompetent defendant must be served within 90 days after the complaint is filed. But under FRCP 4(g), a **minor or legally incompetent** defendant *must* be served in accordance with the **service-of-process rules** of the **state where service is made**. Here, those are the rules of State B.

State B allows a minor to be served by leaving process with "an adult family member with whom the minor resides." Here, the brother's process server hand-delivered the summons and complaint to the uncle at his apartment in State B. And since the 13-year-old sister resides with that uncle, service of process was sufficient. Therefore, the court will likely deny the sister's motion to dismiss.

(Choice B) A family member can receive process on a minor's behalf *only* if the state where service is made allows such service of process—eg, here, allowed in State B but not State A.

(Choice C) Minors *can* be sued in federal court—as anticipated by FRCP 4's provision for serving a minor.

(Choice D) A minor must be served with process pursuant to the service-of-process rules of the state where service is made (State B)—not the state where the suit is filed (State A).

Educational objective:

Under Federal Rule of Civil Procedure 4(g), a minor or legally incompetent defendant can only be served with process by following the service rules of the state where service is made.

FRCP = Federal Rule of Civil Procedure.

References

- Fed. R. Civ. P. 4(g) (service on minor or incompetent person).

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