

MBE Favorites: Civil Procedure



JD ADVISING

► MBE Favorite: Service of Process

1. A university student, a citizen of State A, believes that her university violated federal law when it eliminated funding for the women's varsity volleyball team. She has sued the university, a nonprofit corporation located and incorporated in State B, and the university's athletic director, a citizen of State B, in federal court in State B.

What is the best method of serving the defendants?

- (A) Service as required by State B's rules of civil procedure.
- (B) Service by a process server's leaving copies of the summons and complaint with secretaries in the respective offices of the athletic director and the university president.
- (C) Service by emailing copies of the summons and complaint to the athletic director and the university president.
- (D) Service by the student herself on the athletic director and the university president.

Rule to Remember

Under the Federal Rules of Civil Procedure (FRCP), service may be completed by someone who is at least 18 years old and not a party to the case in one of the following four ways (mnemonic = SAID):

- 1. **State Law**: follow the state law methods where the federal court is located or where service is made;
- 2. **Agent**: deliver a copy of each to an agent appointed (by defendant or law);
- 3. **Individual**: deliver a copy of the summons and complaint to the individual personally; or
- 4. **Dwelling**: leave a copy of the summons and complaint at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there.

(A) is the correct answer. Here, (A) recognizes that the individual may follow the state law methods where the federal court is located (in State B) or where service was made (also in State B). (B) is incorrect because the athletic director would have to be served personally or by an agent appointed by himself or herself or the law (although another method may be utilized). However, serving a secretary may not be enough. (C) is incorrect. This is not an appropriate federal method since e-mail service is not considered personal service. (D) is incorrect because a party may not serve the defendant.

► MBE Favorite: Final Judgment Rule

2. A patient domiciled in State A sued a surgeon domiciled in State B in a federal court in State A, alleging claims for malpractice. The surgeon moved to dismiss the action for lack of personal jurisdiction. The court denied the motion and set discovery cutoff and trial dates.

The surgeon has appealed the denial of the motion.

Should the appellate court hear the merits of the surgeon's appeal?

- (A) No, because the appellate court lacks jurisdiction over the appeal.
- (B) No, because the district court's decision on jurisdiction is final.
- (C) Yes, because a contrary appellate decision could terminate the action.
- (D) Yes, because the surgeon's personal-jurisdiction challenge raises a constitutional question.

Rule to Remember

Generally, appellate courts have jurisdiction over (FODD) **f**inal judgments or **o**rders granting or denying judgment notwithstanding the verdict, **d**irected verdicts, or **d**enial of a new trial. (There are exceptions—e.g., injunctions, interlocutory orders by leave, etc. But none are applicable here.)

(A) is the correct answer. The surgeon may appeal once the case is decided on the merits in district court. However, here, the case has not yet been decided on its merits. (B) is incorrect because the decision can be appealed but not until a final judgment is entered. (C) is incorrect. While it may be true, it does not give grounds for an immediate appeal prior to a final judgment being entered. (D) is incorrect because this alone is not enough to speed up review by the appellate court. The surgeon must wait until a final judgment is entered to challenge this issue on appeal.

▶ MBE Favorite: Effect of Claim Preclusion

3. A car manufacturer produced a car that was sold nationwide. Problems with the car's brakes allegedly caused several accidents and injuries. Two individual buyers of the car each filed a class action, in different states, against the manufacturer, asserting the same products liability claims on behalf of all buyers nationwide. One class action was filed in federal court and the other was filed in state court.

The parties in the federal action reached a court-approved settlement, and the court entered judgment dismissing the action with prejudice.

The manufacturer's attorney has moved to dismiss the state court action on the basis of res judicata (claim preclusion).

Should the state court look to federal or state law to decide the effect of the judgment?

- (A) Federal law, because the judgment was entered in federal court.
- (B) Federal law, because the judgment was the result of a nationwide action governed by the federal class action rule.
- (C) State law, because the judgment is being asserted in a state court.
- (D) State law, because there is no general federal common law and preclusion is a common law doctrine.

Rule to Remember

The Supreme Court has held that a state court must evaluate the preclusive effect of federal judgments under the law of the court that handed down the judgment.

(A) is the correct answer. Here, a federal court handed down the judgment. Thus, a court would look to federal law. (B) is incorrect because it is the fact that the case was decided in federal court that is dispositive of the applicable law, not that it was a federal class action lawsuit. (C) is incorrect because it is immaterial where the judgment is being asserted. When determining the preclusive effect of a prior judgment, we look to the law of the court that decided it. (D) is incorrect because the Supreme Court has held that the federal court has the final say on the preclusive effect of federal court judgments and has developed the applicable federal law on this issue.