

PRACTICE FOCUS / CIVIL PROCEDURE

Is There a Future for Service Through Social Media?

Commentary by Robert Visca

Does a recent case out of New York portend the future for service of process through social media? It's certainly possible. A New York family court recently grappled with the question of whether service of initial suit papers via Facebook was legitimate when all other efforts to effect service had been exhausted and failed.



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A petitioner in the New York matter sought to modify an order for child support. Evidence was presented to the court establishing that the petitioner was unable to effect service upon the respondent. The evidence included an affidavit from the occupant of the respondent's last known address noting that the occupant had lived there for one month and did not know the respondent. The petitioner then contacted the respondent's children via phone calls and text messages to obtain the respondent's location, but he did not receive any response. He also failed in his efforts to locate her via a Google search.

Despite the petitioner's failed attempts to locate the respondent, he was aware that the respondent maintained an active social media account on Facebook. He knew this because the respondent had "liked" photographs that the petitioner's wife had posted just two months before

the hearing date. New York's procedural rule pertaining to "personal service" provides that service can be made in any manner that the court directs if actual service is impracticable. The court ruled that actual service was impracticable here based on the petitioner's inability to obtain an address where service could be made despite his diligent efforts to do so. The only viable means available by which to serve the respondent was via Facebook and thus, the court authorized substitute service via the respondent's Facebook account.

Traditionally, courts around the country, including in Florida, have always required that initial service of suit papers be made in person. Prior to the advent of email, all subsequent legal documents, such as discovery, had to be served via mail. Now, service of documents subsequent to the initial pleading can be made via email. This ruling out of New York raises the question of whether the continued evolution of technology and global connectedness via social media will eventually change the way initial service is carried out under all circumstances or, at the very least, in a situation where a party cannot be located via any other means.

Even if this is the direction that the legal community is headed, it remains unclear what impact, if any, such a trend would have on corporations doing business in the state of Florida. One possibil-

ity is that corporations in Florida would not be affected by any shift in this process, as there are specific rules in place governing service on corporations that are intended to ensure that initial service can be completed via traditional means. For example, a corporation doing business in Florida is required by law to designate a registered agent and office and keep that office open for a set period of time each day to accept service. Moreover, even if a corporation failed to comply with those requirements, service may be permitted on corporate officials, directors, officers or even employees if all else failed. Thus, some may argue that change is unnecessary as the laws governing service on corporations in Florida are inclusive, self-sustaining and fail-proof.

However, technological advances necessitate change in all aspects of society and if we—the legal community—are not evolving with it, we risk getting left behind by it. We have already seen how the practice of law is changing with the times, whether it

is the push toward paper-free practice, streaming data or digital communication. As social media has undeniably led to a culture of interconnectedness, convenience and instant results, one could argue that how we go about serving initial suit papers should evolve to take advantage of these tools.

The real question is should corpora-

tions in Florida even care if the process evolves? If a Florida court was to eventually adopt a similar philosophy to that of the New York court, then this could potentially benefit corporations in Florida. Consider, for example, a corporation that is sued for negligence in a personal injury case and, through discovery, learns of an individual who is partially or fully responsible for the claimant's alleged damages. Alternatively, a defendant corporation may learn of a witness with information pertinent to liability or damages that it wishes to depose. Under the New York precedent, the corporation may be entitled to effect initial service via the individual's social media account if it was unable to do so through any other means. The ability to serve someone through social media could ultimately create a better likelihood of reducing or eliminating a corporation's exposure in a lawsuit.

On the flip-side, a corporation would potentially no longer need to maintain a designated registered agent at a registered office to accept initial service of suit papers if service could be made through a simple click of the mouse at a designated website or social media page operated by the company. While these types of changes may be considered "drastic" compared to the traditional methods, it is not too difficult to imagine a future legal landscape where such is the norm.

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