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## Online Options: Rules for Service in Flux

Commentary by Kimberly Wald



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Modern technology plays a significant role in our ever-changing social climate.

Social media such as Facebook, Twitter, Instagram and LinkedIn have had a tremendous impact on our everyday lives. We no longer listen

to the radio to get our news, we now check Twitter. We don't use travel agents to book airline tickets, we now search websites such as Kayak or Expedia.

Companies, such as my law firm Kelley/Uustal, no longer run strictly brick-and-mortar businesses. We now utilize online and social media sources to reach our clients. Long gone are the days of snail mail, we now have video chat and can communicate instantly with people across the world!

Yet one aspect in society has consistently remained immune from the influence of social media: the rules of civil procedure. However, this also may be evolving due to modern technology and the ever-growing popularity and ease of use of social media websites.

Recently, a judge in New York City held that a woman was permitted to "serve" her soon-to-be ex-husband with divorce papers via a Facebook message.

The judge ruled that service of the divorce summons may be accomplished by a private message through Facebook sent to the husband once a week for three consecutive weeks or until the service was acknowledged.

This holding stemmed from the woman's inability to locate her husband and serve him in a traditional manner. The woman tried to serve his last known address, but he had previously vacated that address. She contacted the post office, but it did not have a forwarding address for him. Further, there was no record of him at the Department of Motor Vehicles and no billing address linked to his prepaid cell phone. It appeared that the only viable method of communication with the man was through his Facebook social media account.

As a result, Manhattan Supreme Court Justice Matthew Cooper allowed the woman to "serve" official divorce papers via the online social-media website Facebook. The court reasoned, "The next frontier in the developing law of the service of process over the Internet is the use of social media sites as forums through which a summons can be delivered."

### NOVEL SERVICE

Interestingly enough, this was not

the first time (and presumably will not be the last time) a judge allows service of court documents via Facebook messages. In 2014, a judge in Staten Island similarly allowed a man to serve his ex-wife with notice regarding child-support payments because conventional methods of service failed.

Further, in 2013 a New York federal district judge held that a plaintiff was allowed to serve motions and other post-complaint documents to five defendants via both traditional email and Facebook messages. In *FTC v. PCCARE247, et al.*, the court recognized the tremendous risk of approving service via online forms of communication.

"The court acknowledges that service by Facebook is a relatively novel concept and that it is conceivable that defendants will not in fact receive notice by this means. But as noticed, the proposed service by Facebook is intended not as the sole method of service but instead to backstop the service upon each defendant at his or its known email address. And history teaches that, as technology advances and modes of communication progress, courts must be open to considering requests to authorize service via technological means of then-recent vintage rather than dismissing them out of hand as novel."

Thus, it is clear that the world of social media is changing the landscape of the modern practice of law. In fact, just a few months ago the Florida Bar issued a proposed advisory opinion regarding this very subject of the changing role of legal ethics and social media. On Jan. 23, the professional ethics committee of the Florida Bar issued an opinion regarding the "ethical obligations on advising clients to 'clean up' their social media pages before litigation is filed to remove embarrassing information that the lawyer believes is not material to the litigation matter." Accordingly, attorneys must adapt to this new technology in order to zealously and ethically represent their clients.

Although it is extremely important for attorneys to be aware of the implications of social media on modern litigation, it is still unclear the extent of how social media will influence the practice of law. Will service of process through social media websites become the new norm? Or will this proposal be rejected as a violation of due process? For now, be warned, the next time you post that adorable picture of your dog on Facebook, you may possibly be subjecting yourself to service of official court documents!

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