

Can I serve my family law documents by social media?

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As the use of technology in workplaces and our daily lives continues to grow more than ever due to the COVID-19 pandemic, social media is ever-present in our social and professional lives. The growing use of social media has had many implications for family law matters. For example, it has become increasingly common for social media posts to be relied on as evidence. In this blog, we explore whether the service of family law documents through social media is allowed by the Courts.

What is ‘service of documents’?

Service is the legal term that describes the giving of court documents by one person to another in a way that the Court is satisfied that the other person has received them.

Serving documents means notifying a person that you have commenced legal proceedings against them, or that you have filed further documents with the Court in an existing legal proceeding. In family law proceedings, any application or document filed with the Court must be served on the other party or parties to the proceeding.

How is service carried out?

There are three ways that service of documents can be carried out:

1. Personal service – handing the document to the other person;
2. Ordinary service – posting or emailing the document; or
3. Any other way as ordered by a Court.

Serving family law documents using an order for ‘substituted service’

The *Federal Circuit Court Rules* and *Family Court Rules* set out the different rules for serving documents in family law matters. For instance, initiating applications in family law matters are required to be served ‘by hand’ (‘personal service’ as mentioned above), meaning that the other party must be physically located and have the documents handed to them.

However, there may be instances where the methods of service required by the rules of the Court are not possible or practical. For example, an applicant might be unable to locate the other party and be unable to serve them by hand. In such circumstances, a Court has discretion to make an order for that particular document to be served in another way. This is referred to as an order for ‘substituted service’.

Common orders sought for substituted service include service via Facebook or service via email. Other social media methods to effect substituted service may be Twitter or Instagram direct message.

In circumstances where the Court is satisfied that a party has made all reasonable attempts to serve a document, the Court may dispense with the service requirement (‘dispensation of service’).

How to serve family law documents via social media

Orders for service to occur via social media have become relatively common. For an order for substituted service (which is required to serve your documents via social media) to be made, the party seeking this must submit an application to the Court which includes an accompanying affidavit.

It is a requirement that the method of service selected must likely bring the documents to the other party’s attention. Therefore, a Court will likely not make such an order if there is doubt as to whether the documents will come to their attention, or if the person controlling the account isn’t the person required to be served.

Requirements of your affidavit

Your affidavit must:

1. set out whether an order for substituted service or dispensation with service is sought (and what method is being proposed); and
2. show evidence of all the service attempts made (to prove that all reasonable steps to serve the document have been taken).

And, if an order for substituted service is sought, the party making the application for the order must show through their affidavit:

1. how that method of service will bring the document to the attention of the relevant party (in a timely fashion);
2. that the social media account to which the document is served belongs to the relevant person; and

3. that the person still uses that social media account.

Notable cases

Service via Facebook – Byrne v Howard [2010] FMCAfam 509

In *Byrne v Howard*, Federal Magistrate Brown considered the issue of substituted service via Facebook. In this case, the applicant was a mother of a young child who issued proceedings against the alleged father of the child, seeking to have a parentage test completed.

The mother unsuccessfully attempted to contact the father through various methods: a letter was sent to the father at his last known address, a letter was sent to the father's parents' address, and a process server was engaged to personally serve the documents on the father.

Despite these attempts, service was not successful. Therefore, the applicant's solicitor sent the documents via Facebook and sought an order for substituted service via Facebook.

The Court made an order for substituted service, as it was satisfied that:

1. all reasonable steps had been taken to serve the documents on the father in the normal way; and
2. it was highly likely that the proceedings had been brought to the father's attention.

The Court held that the application had been properly served on the father as:

1. the father was known to use Facebook regularly;
2. the photo on the Facebook profile was identified as that of the father; and
3. after the mother's solicitors sent the documents via Facebook, the father closed his Facebook account.

Conclusion

In certain circumstances, it may not be possible or practical to serve the required family law documents through usual methods of service.

The Courts have discretion to grant an order of substituted service, however the party seeking the order must prove that all methods of service have been exhausted and that the method of service is reasonably likely to bring the document to the attention of the intended party.

How a family lawyer can help

The team at Smith Family Law can assist you with complying with service requirements to ensure that your family law documents are correctly served. Feel free to get in touch with us if you wish to discuss your family law matter with a lawyer.

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