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ALERT

NEW JERSEY STATE COURT AUTHORIZES FACEBOOK AS AN ALTERNATE MEANS OF SERVICE

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Service through social media has come to New Jersey. The Morris County Chancery Court, in a first-of-its-kind case in New Jersey, held that Facebook is a reasonable alternate means of service, and an acceptable sole means of service where circumstances warrant and such service comports with due process.

Courts in New York paved the way for the New Jersey decision. In 2013, the United States District Court for the Southern District of New York permitted service of documents other than the Summons and Complaint by Facebook, together with service by email. *FTC v. PCCARE 247, Inc., et al.*, 12 Civ. 7189 (PAE) (2013). The defendants that the FTC was attempting to serve in *PCCARE* operated an internet business and used email frequently for communication, demonstrating a high likelihood that they would receive and respond to emails sent to them. When the FTC was unable to serve them by other means, it requested service by email. To be thorough, the FTC also proposed service by Facebook. The FTC supplied ample facts to establish that the Facebook accounts identified were actually operated by the defendants to be served. The FTC also demonstrated that it had attempted traditional means of service without success. The court found that service by email and Facebook was warranted and satisfied the requirements of due process.

In 2015, a New York state court permitted service by Facebook, this time of a divorce complaint. The court acknowledged that service by Facebook was a radical departure from traditional forms of service permitted by its procedural rules and that a high degree of scrutiny was required. But the court also found that the use of social media for service should not be rejected simply because it was novel and that courts should keep pace with technology. The court raised three concerns: 1) whether defendant's Facebook account really belonged to defendant; 2) whether defendant actively used the Facebook account; and, 3) whether an additional form of service was required. The plaintiff convinced the court that the Facebook account actually belonged to the defendant and that he logged into his Facebook page regularly. The plaintiff also convinced the court that the methods of service prescribed by the rules were not possible. However, because the plaintiff did have a phone number for defendant, the Court directed plaintiff and her attorney to call and text message defendant to inform him that they had served the divorce Summons on him through Facebook. *Baidoo v. Blood-Dzraka*, 5 N.Y. S. 3rd 709 (2015).

In the New Jersey case, *Axberg v. Langston*, Docket No. MRS-C-157 (2016), a stranger sought to "friend" the plaintiffs' adopted teenage son on Facebook. The defendant also contacted the son

by Instagram, identified himself as the son's birth father and sought to continue to contact the son in the future. The defendant further invited the son to view his Facebook profile and photos of his alleged siblings. The son reported the attempted contacts to his parents who viewed the defendant's Facebook profile and were shocked to find that defendant had copied a photo of their son from the father's Facebook page and posted it on defendant's Facebook profile as one of his own children. The defendant also sent Facebook friend requests to the father and his sister.

The parents filed an action in the Morris County Chancery Court seeking emergency restraints against the defendant. Defendant's Facebook page listed no telephone number or email address, and cease and desist notices sent to two posted mail addresses were returned unclaimed with no forwarding address. Since plaintiffs had no idea whether defendant even lived in the United States, let alone in what state, service by publication was not feasible. As the defendant could not be served personally, by mail, by publication or by email, the only recourse was service by Facebook. The Court raised the same concerns as the court in *Baidoo*. However, the plaintiffs provided ample proof that the Facebook account belonged to the defendant and that he actively used it, as evidenced by the fact that he frequently updated the site and logged in on a regular basis. Concluding that there was no other way to serve the defendant, the Court authorized service by Facebook.

Plaintiffs' attorney served the defendant through his firm's Facebook account which showed the time that the documents were sent, received and viewed on defendant's Facebook account. In response, plaintiffs' attorney received a private message by Facebook from the defendant, "I will see you in court." Defendant appeared by telephone on the return day of the order to show cause. The Court continued the restraints that plaintiffs had previously sought and had been granted (removal of all information pertaining to the son from social media and no further contacts with the son or his relatives).

The facts of this case presented the perfect scenario for service by Facebook alone: proof that the Facebook account belonged to, and was used often by, the defendant, and the lack of any other viable means to serve him. Had other means to serve defendant existed, the court likely would have required service through both Facebook and the other means of service. However, when it is the last resort for service, at least one New Jersey judge has held that service by Facebook alone will satisfy due process and constitutes an acceptable means of alternate service. ♦

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