CARLTON FIELDS

Where is the "Serve" Button?

December 22, 2014

A handful of recent federal and state court decisions have opened the door for plaintiffs to serve defendants digitally via Facebook and LinkedIn messaging. Although this phenomenon was originally restricted to serving foreign individuals under Federal Rule of Civil Procedure 4(f)(3), **it could soon expand to cover U.S. individuals**. Between March 2013 and February 2014, two federal courts allowed foreign defendants to be served via social media. In both cases, the courts initially determined whether the defendant's resident nation had affirmatively disallowed service via social media in an agreement with the United States. When that question was answered negatively, the courts—the Southern District of New York in *FTC v. PCCare247 Inc.* and the Eastern District of Virginia in *Whoshere, Inc. v. Orun*—examined whether service via social media was "reasonably calculated under the circumstances" to provide notice, in accordance with due process standards. In both cases, the courts allowed service via social media—but required that it be supplemented with service via email. Then, in September 2014, a family court in Staten Island, New York, allowed a defendant to be served via Facebook when the traditional methods of service proved inadequate. Determining that the defendant had been actively using her Facebook account, the court concluded that Facebook provided **"the best chance of the [defendant] getting actual notice of these proceedings."** Nevertheless, the court also required mailing of service to the defendant's last known address. These cases appear to demonstrate courts' increased willingness to allow service via social media, at least to the extent that it reflects a broader approach to effectuating service on difficult-to-serve defendants. While these three courts have also required concurrent service via traditional routes, the door has been opened. Nonetheless, perhaps in the near future, service via social media will become as widespread as service via email.

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