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Tag You're @It: Creative Service with #SocialMedia

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> *Though Defendant does not "mess with the rules," the rules still "mess with him."* See Lawson v. FMR LLC*, 571 U.S. 429, 459–60 (2014) ("We are a government of laws, not of men.").*[1]

As individual and corporate defendants alike have reduced their physical footprints with the increasing accessibility of the World Wide Web, litigants have asked federal courts to get more creative with service. A rise in disputes about cryptocurrencies, the blockchain, and non-fungible tokens (or NTFs) is increasingly leading those parties to attempt to and succeed at evading service. Attorneys familiar with the internet's nooks and crannies and its innumerable social media platforms may prove indispensable when needing to serve the otherwise un-servable.

In federal court, service of process on a defendant is governed by Rule 4 of the Federal Rules of Civil Procedure. The federal rules provide methods by which individuals and corporations can be served with process. One option for federal plaintiffs is to serve a federal defendant by "following state law for serving a summons in an action brought . . . in the state where the district court is located or where service is made."[2]

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[1] Sony Music Ent. Inc., et al. v. Dantreal Daevon Clark-Rainbolt, No. 4:23-cv-275, slip. op. 1, n.1 (N.D. Tex. June 14, 2023).

[2] Fed. R. Civ. P. 4(e)(1), (h)(1)(A).

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Many states, including for instance neighboring Iowa, allow courts to order alternative methods of service consistent with due process if service cannot be made by any of the methods provided by rule.[3] As a result, a plaintiff looking to serve a party located in Iowa—or to serve a party to a case pending in a federal court sitting in Iowa[4]—who has exhausted traditional methods of service could seek leave to effectuate service by social media. And they have. A federal magistrate judge sitting in Des Moines has permitted service on a California resident's social media accounts after the plaintiff had exhausted traditional methods of service. That court found that the requirements of due process would be met, as "service by means of social media accounts associated with the defendant reasonably could be expected to provide her with notice of the lawsuit against her" because the plaintiff had established her frequent, regular use of social media.[5] Specifically, that court permitted service by email and Facebook private message.

In other jurisdictions, where state law also allows for alternative service when traditional means have been exhausted, courts have even recognized that service by social media could better effectuate service than the alternatives of the past, such as by newspaper publication. A court of the Northern District of Texas doubted whether a difficult-to-serve "SoundCloud and TikTok rapper extraordinaire" was a regular newspaper reader or visitor to the Fort Worth city website. Instead, the plaintiff there had demonstrated the "young bard" posted daily on Instagram, Twitter, TikTok, and SoundCloud, and the court permitted service by direct message to those accounts.[6]

The chief judge of the Southern District of Florida permitted service by social media under Rule 4(f)(3), which permits alternative service on foreign defendants so long as the alternative method is calculated to provide notice and is not prohibited by international agreement. There, the court allowed the foreign defendant to be served by email and by publishing a post on Twitter in which the defendant was tagged.[7]

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[3] Iowa R. Civ. P. 1.305(14).

[4] Rule 4(e)(1) allows for service according to the law of the state where service will occur or according to the law of the state where the federal court itself is located.

[5] Maharishi Found. USA, Inc. v. Love, No. 4:16-cv-52, 2016 WL 11606685, at *2 (S.D. Iowa Sept. 19, 2016).

[6] *Supra*, note 1 at 3–4.

[7] Edwin Garrison, et al. v. Kevin Paffrath, et al., No. 23-cv-21023, slip op. at 2–4 (S.D. Fla. May 2, 2023).

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Illinois courts have long been permitted to order "service to be made in any manner consistent with due process."[8, 9] Indeed, April 2023 brought with it amendments to Illinois Supreme Court Rule 102 that, according to the Court's press release, "provide for the electronic service of summons and complaints in civil proceedings in recognition of society's increased use of electronic methods to communicate."[10] Specifically, the amendments affirm such service that was already allowed: "for summons to be served via social media direct message, e-mail, or text message by special order of the court, when service by traditional means is impractical."

Although service by creative, online means may become commonplace before long, being versed in the language of social media now can help young attorneys cement their value in this evolving aspect of litigation. As a starting point, familiarity with Illinois Supreme Court Rule 102(f) will be important:

- At 102(f)(1), the Rule requires a plaintiff to satisfy the court that, for the means of service proposed, the defendant "has access to and the ability to use the necessary technology to receive and read the summons and documents electronically."
- At 102(f)(2), the Rule adds additional requirements to the affidavit necessary when seeking alternative means of service under Section 2-203.1.
- At 102(f)(1)(A)–(C), the Rule specifies language that must be included in the social media message, e-mail, or text message used to effectuate service.
- At 102(f)(3), the Rule requires that the plaintiff nevertheless serve the party by mail to their last known residence.
- At 102(f)(4), the Rule states the minimum details necessary to prove service was accomplished by Rule 102(f)'s enumerated alternative methods.

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[8] 735 ILCS 5/2-203.1.
[9] So too, then, have federal courts sitting in Illinois. *See* Fed. R. Civ. P. 4(e)(1).
[10] *Illinois Supreme Court reinforces service of summons allowable via social media, text and email*, ILLINOIS COURTS (Apr. 25, 2023), available at https://www.illinoiscourts.gov/News/1225/Illinois-Supreme-Court-reinforces-service-of-summons-allowable-via-social-media-text-and-email/news-detail/.

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Rules permitting alternative service through social media platforms, such as Iowa's open-ended rule and Illinois' rule specifically defining social media service, provide a new angle for attorneys hoping to serve the most evasive defendants. But at the same time, detailed schemes like Illinois Supreme Court Rule 102 contain pitfalls for attorneys who hope to get creative with service by their novel requirements. Young Illinois attorneys, however, will have opportunities to define the conversation around service and other aspects of litigation that will continue to be supplemented with the advent of technology.

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