



**ANDERSONS**  
S O L I C I T O R S

## LawTalk Blog



# Can I serve my Family Law court documents using social media?

**Author:** [Ryan Thomas](#)

**Email:** [enquiry@andersons.com.au](mailto:enquiry@andersons.com.au)

**Phone:** 08 8238 6625

**Date:** Thursday September 21, 2017

All documents filed in court in [Family Law](#) proceedings must be given to the other party in a process known as 'service'.

The Family Law Rules 2004 (Cth) and the Federal Circuit Court Rules 2001 (Cth) set out in detail the rules for serving court documents on other parties and proving to the court that service has occurred.

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

1. Special service – this is the usual method of service where documents are either handed to the other party by a third party known as a 'process server' or posted to the other party and the other party returns a document called an 'Acknowledgment of Service';
2. Ordinary service – in limited circumstances documents can be served by posting or emailing the documents to the other party and the other party is not required to return the 'Acknowledgment of Service'; or
3. By another way as provided for in a court order.

There are times in Family Law proceedings where a party bringing an application before the court has been unable to serve the other party through the usual special service methods. This situation can often occur if the other party does not have a fixed residential address.

In these circumstances, the party bringing the proceedings is required to make an application to the court for an order dispensing with service, or substituting another way of service for the document concerned.

To make an order for dispensing with service or substituting another way of service, the court is required to consider the following:

1. Whether reasonable steps have been taken by the party bringing the proceedings to serve the document on the other party;
2. Whether it is likely that steps have been taken that will have brought the existence and nature of the documents to the attention of the other party;
3. Whether the person being served could become aware of the existence and nature of the documents in question by means of an advertisement (for example in a newspaper) or some other means of communication that is reasonably available;
4. The likely costs to the party bringing the proceedings who has to serve the documents; and
5. Any other relevant matter.

## Federal Magistrates Court looks to Facebook for service of court documents

Federal Magistrate Brown (as His Honour then was) was required to consider the above issues in the matter of *Byrne & Howard* [2010] FMCAfam 509. In this case, the mother of a young child commenced proceedings against the alleged father of the child. The aim was to have parentage testing completed to confirm paternity so that child support payments could be sought from the father.

The father did not have stable accommodation and it was clear that he moved around fairly regularly. The mother's solicitor made the following attempts to serve the father:

1. A letter was sent to the father at his last known residential address. The father did not respond.
2. A letter was sent to the father's parents' residential address. Again, there was no response.
3. A process server was engaged to attempt to personally serve the documents on the father at his parents' address. The process server spoke to the father's parent who advised that the father was currently living in Queensland. The process server left his details and requested the parent to inform the father to contact him. Nothing further was heard.

An order was sought by the mother's solicitor, for the father to be served by electronic means using the social networking site, Facebook.

*"This opens options for documents to be served through many social media platforms; for example LinkedIn and Twitter."*

On the basis that a private message could be sent to the father using Facebook, Federal Magistrate Brown was prepared to make an order that the documents be served on the father by electronic means as substituted service.

In coming to this decision, Federal Magistrate Brown was satisfied of the following:

1. That the father uses Facebook regularly as evidenced by his Facebook page.

2. That the documents were sent to the father via private message and an electronic receipt, or electronic confirmation, had come back from Microsoft Exchange stating that the delivery was complete.
3. That the father took down his Facebook page, after the correspondence had been received from the mother's solicitor.

In the above circumstances, Federal Magistrate Brown was satisfied that all reasonable steps had been taken to serve the father in the normal prescribed way. Federal Magistrate Brown was also satisfied that the proceedings had been brought to the attention of the father through either receiving one of the letters sent to him, through his parent who advised him that they were looking for him or through the Facebook private message that was sent to the father.

It should be noted that although in this specific case, documents were served via Facebook. This opens options for documents to be served through many social media platforms; for example LinkedIn and Twitter.

If you're aware the court is attempting to serve you with court documents, it is not appropriate to simply ignore the court. No matter how unpalatable the serving of documents may be, it is in your best interests to respond and attend to it sooner rather than later.

## Find this article of use or interesting?

You might also like to read:

- [Is your social media account discoverable in your Family Court proceedings](#)

---

*Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to Australian Federal legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.*