

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

M.J.,

CASE NO. 9:10-CV-81111-WPD

Plaintiff,

Vs.

JEFFREY EPSTEIN, and
SARAH KELLEN,

Defendants.

/

**PLAINTIFF M.J.'S RESPONSE TO EPSTEIN'S MOTION TO QUASH SERVICE OF
PROCESS AND MOTION FOR A HEARING TO PROVE FRAUD, TO PROVE
PROPER SERVICE, TO OBTAIN SANCTIONS FOR EPSTEIN'S SUBMISSION OF A
FRAUDULENT AFFIDAVIT, TO OBTAIN A WARNING FORBIDDING FURTHER
OBSTRUCTIONS IN THE CASES, AND TO SET AN ACCELERATED SCHEDULE
FOR DISCOVERY**

Plaintiff, M.J., hereby files this response to Epstein's Motion to Quash Service of Process and for a hearing to demonstrate fraud, to prove the defendant Epstein was properly served, to obtain sanctions for his submission of fraudulent affidavits, to obtain a warning forbidding any further obstruction in the case, and to set an accelerated schedule for discovery including an Order that Epstein is in default for failing to timely answer the complaint.

Plaintiff M.J. was repeatedly sexually abused by defendant Jeffrey Epstein when she was a minor. Epstein is a politically-connected billionaire. M.J. filed suit in this Court against Epstein, seeking substantial damages. After Epstein's counsel refused to accept service of M.J.'s complaint, M.J.'s counsel sent a private investigator to Epstein's New York mansion (Epstein's usual place of abode) to serve Epstein. On Friday,

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October 8, 2010, the investigator hand-delivered to one of Epstein's employees, who identified himself as "Mark," a copy of the summons and complaint and other related documents, which "Mark" then took into Epstein's mansion. This constituted proper service under the federal rules.

Epstein's answer to M.J.'s complaint was accordingly due on Friday, October 29, 2010. Rather than answer the complaint, however, on October 29, Epstein's legal counsel filed a motion to "quash" service of process, alleging that process was not properly made. Attached to the Motion was an Affidavit of Richard Barnett, which swore that an "unmarked and unpostmarked envelope was discovered in the mailbox at Mr. Epstein's vacation home in New York at 9 East 71st Street on Wednesday October 13, 2010. . . . *Service was never delivered to anyone at Mr. E[ps]tein's house.*" The statement that the service was not delivered to anyone at the house was false and nothing short of an intentional fraud being committed on the court. The circumstances surrounding the making of this statement strongly suggest that Barnett swore to this false statement deliberately, for the purpose of obstructing proper proceedings in this case. Defendant Epstein's history of obstructing sexual abuse litigation against him strongly supports the conclusion that Epstein contrived for Barnett to perjure himself in the affidavit.

M.J. accordingly asks that Epstein's Motion To Quash be denied and that she be granted a hearing to prove these facts, to prove that service has properly been made, to obtain appropriate sanctions for the perjury, to have the court warn Epstein against further improper obstruction, and to set an accelerated discovery schedule in this case,

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and to Order Epstein to immediately file an Answer to MJ's Complaint or alternatively to Strike Epstein's pleadings.

FACTUAL BACKGROUND

At any hearing the Court might conduct, M.J. is prepared to establish the following facts through competent and admissible testimony. In this pleading, M.J. will also provide affidavits and other evidence sufficient to permit the Court to move forward on the basis of this pleading alone. Because Epstein has a history of not responding directly to allegations made by girls he has sexually abused, M.J. is numbering each of her individual facts. If Epstein does not respond to M.J.'s facts specifically, the Court should draw the obvious conclusion that the fact is accurate.

M.J.'s Facts Supporting Proper Service of Process

1. On September 17, 2010, M.J. filed a complaint in this Court, alleging that defendant Jeffrey Epstein had repeatedly sexually abused her while she was a minor. See *M.J. v. Epstein*, No. 9:10-CV-81111-WPD (DE 1).
2. On about September 2, 2010, counsel for M.J., asked Christopher Knight, legal counsel for Jeffrey Epstein, in writing if he would accept service of process for Epstein. Epstein's counsel refused to accept service.
3. Counsel for M.J. then retained the services of Thomas Marsigliano, a Private Investigator in New York, to make service on Epstein and one whom the law firm of Farmer, Jaffe, Weissing has been forced to pay \$1,400.00, up to this point just to obtain service on Epstein. **Declaration of Edwards – Exhibit 1 at ¶16-17.**

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4. Marsigliano was provided with the address of Epstein's New York mansion, where Epstein was residing. Marsigliano conducted several days of surveillance on Epstein's mansion in an attempt to personally serve Epstein. Declaration of Thomas Marsigliano (**Exhibit 2**) at ¶2-5 (hereinafter "Marsigliano Dec.").

5. On Friday, October 8, 2010, Marsigliano went to Epstein's mansion at 9 East 71st Street, and he knocked on the door. An employee of Epstein who identified himself as "Mark" answered the door and informed Mr. Marsigliano that Epstein was "not home" before he accepted service for Epstein. See *Marsigliano Dec.* at ¶5-7.

6. On October 13, 2010, Mr. Knight approached Mr. Edwards after a hearing to discuss this case on behalf of his client and Mr. Edwards informed Mr. Knight that someone at Epstein's residence in New York had accepted service for Epstein.

7. On October 29, 2010, proof of service was lodged with the Court (DE_5) – (corrected to DE_11-Summons (Affidavit) Returned Executed). That proof of service stated that Marsigliano had left the summons "at [Epstein's] residence or usual place of abode with Mark, a person of suitable age and discretion who resides there"

8. The foregoing service constituted proper service the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 4(e)(2)(B). Under the Federal Rules of Civil Procedure, an answer to a properly served complaint must be filed within 21 days. Fed. R. Civ. P. 12(a)(1)(A).

False Statement by Richard Barnett, an Agent of Epstein

9. On October 29, 2010, Lilly Ann Sanchez, legal counsel for Epstein, filed a motion in this Court to Quash Service of Process. (DE 7).

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10. Attached to the pleading was an Affidavit of a Richard Barnett. The affidavit stated:

“On Wednesday, October 13, 2010, an unmarked and unpostmarked envelope was discovered in the mailbox at Mr. E[ps]tein’s vacation home in New York City at 9 East 71st Street. The envelope contained a Summons and Complaint in the subject action, a Civil Rico Case Statement, a deposition subpoena, notices of video depositions, interrogatories and requests for production. Service was *never delivered to anyone at Mr. E[ps]tein’s house.*”

Affidavit of Richard Barnett at ¶ 2-3 (emphasis rearranged) (DE_7-1). The affidavit also stated that Barnett had been duly sworn. Barnett signed the document before a New York Notary Public, although it should be noted that the Notary does not properly indicate how Richard Barnett was properly identified. *Id.*

11. The affidavit of Richard Barnett was patently false. As recounted above, service had been delivered to “Mark” at Epstein’s house on October 8, 2010. See Para. 5, *supra*.

12. The affidavit of Richard Barnett is written to obscure important information. In particular, the affidavit uses the passive voice to state that “an unmarked . . . envelope was discovered in the mailbox” at Epstein’s home. The affidavit does not state who made the discovery. The affidavit does not state whether Barnett has personal knowledge of the facts contained in his affidavit.

13. Barnett subsequently filed a second affidavit, this time to merely announce that nobody named “Mark” was at the house on October 8, 2010. While this may be true, this only demonstrates that the person who accepted service on October 8, 2010 at Mr.

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Epstein's residence lied about his name, and accordingly Mr. Barnett's second affidavit is virtually worthless.

Epstein's Pattern of Obstruction in Other Similar Civil Suits Against Him

14. The false affidavit filed by Barnett in this case parallels other false statements made and evasive actions taken by Epstein's associates in other similar civil cases filed against him by other young girls he sexually abused. More than 20 civil cases like M.J.'s have been filed against Epstein in the last three years. Epstein has settled all of the cases. Among those cases was a federal lawsuit filed by Jane Doe in this court, styled as Jane Doe v. Epstein, 9:08-cv-80893. M.J.'s legal counsel also handled Jane Doe's case against Epstein.

15. While working on that case and others like it, Edwards learned through deposition that Ghislaine Maxwell was involved in managing Epstein's affairs and companies. See *Edwards Dec.* at ¶ 4.

16. Epstein's housekeeper, Alfredo Rodriguez, also testified that Maxwell took photos of girls without the girls' knowledge, kept the images on her computer, knew the names of the underage girls and their respective phone numbers and other underage victims were molested by Epstein and Maxwell together. In light of this and other information, Edwards served her for deposition in 2009. Maxwell was represented by Brett Jaffe of the New York firm of Cohen and Gresser, and Edwards understood that her attorney was paid for (directly or indirectly) by Epstein. She was reluctant to give her deposition, and Edwards tried to work with her attorney to take her deposition on terms that would be acceptable to both sides. The result was a confidentiality

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agreement, under which Maxwell agreed to drop any objections to the deposition. Maxwell, however, contrived to avoid the deposition. On June 29, 2010, one day before Edwards was to fly to New York to take Maxwell's deposition, her attorney informed Edwards that Maxwell's mother was deathly ill and Maxwell was consequently flying to England with no intention of returning to the United States. Despite that assertion, Ghislaine Maxwell was in fact in the country on July 31, 2010, as she attended the wedding of Chelsea Clinton (former President Clinton's daughter) and was captured in a photograph taken for US Weekly dated August 16, 2010. See *Edwards Dec.* at ¶ 6-7.

17. Maxwell was not the only important witness to lie to avoid deposition by Edwards in the Jane Doe case. Jean Luc Brunel did so as well. Upon review of message pads police took from Epstein's home, many were discovered to be from Jean Luc Brunel, a French citizen and one of Epstein's closest friends. Brunel left messages for Epstein that were taken by Epstein's staff such as "He has a teacher for you how to speak Russian. She is 2x8 years old not blonde: Lessons are free and you can have 1st today if you call". **Exhibit 3.** In light of the circumstances of the case, this appeared to be an encrypted message suggesting that Brunel might have been procuring two eight-year-old girls for Epstein to sexually abuse. According to widely circulated press reports, Brunel is in his sixties and has a reputation throughout the world (and especially in the modeling industry) as a cocaine addict that has for years molested children through modeling agencies while acting as their agent. Brunel is also someone that visited Epstein on approximately 67 occasions while Epstein was in jail. See *Edwards Dec.* at

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¶ 8-10. Brunel currently runs the modeling agency MC2, a company for which Epstein provides financial support.

18. In view of this information suggesting Brunel could provide significant evidence of Epstein's trafficking in young girls for sexual abuse, Edwards had Brunel served in New York for deposition. Before the deposition took place, Brunel's attorney (Tama Kudman of West Palm Beach) contacted Edwards to delay the deposition date. Eventually Kudman informed Edwards in January 2009 that Brunel had left the country and was back in France with no plans to return. This information was untrue; Brunel was actually staying with Epstein in West Palm Beach as evidenced by Epstein's probation file where Epstein was required to note is house guests. See Edwards Dec. at ¶ 11-12. As a result, Edwards filed a Motion for Order to Show Cause, (DE 483), attached hereto as **Exhibit 4**. (Because Epstein settled this case, the motion was never ruled upon.)

19. Edwards was also informed that Epstein paid for not only his representation during the civil process but also paid for legal representation for Sarah Kellen (Epstein's executive assistant and procurer of girls for him to abuse), Larry Visoski (Epstein's personal pilot), Dave Rogers (Epstein's personal pilot), Larry Harrison (Epstein's personal pilot), Louella Rabuyo (Epstein's housekeeper), Nadia Marcinkova (Epstein's live-in sex slave), Ghislaine Maxwell (manager of Epstein's affairs and businesses) , Mark Epstein (Epstein's brother), and Janusz Banasiak (Epstein's house manager). It was nearly impossible to take a deposition of someone that would have helpful information that was not represented an attorney paid for by Epstein. See Edwards Dec. at ¶ 13-14.

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20. Epstein has deliberately hidden relevant correspondence regarding his guilt of sex offenses by making only partial productions of correspondence in other cases, as detailed at greater length in M.J.'s contemporaneously filed Motion for Instructions to Epstein to Preserve Certain Correspondence.

21. Epstein has harassed girls who have filed civil suits against him, as detailed at greater length in M.J.'s contemporaneously filed Motion for a Protective Order Barring Direct or Indirect Conduct with Her.

22. In view of this pattern of obstruction other cases, the reasonable inference arises that Barnett's false statement in his affidavit was not an accident, but rather a deliberate evasion orchestrated by Epstein to delay the orderly processing of this case.

LEGAL MEMORANUM

I. THE COURT SHOULD HOLD AN EVIDENTIARY HEARING ON THE CIRCUMSTANCES SURROUNDING BARNETT'S FALSE STATEMENT.

Before this case can proceed to its conclusion, Epstein must be served. There is now an evidentiary dispute about whether service has been properly made. M.J.'s investigator, Thomas Marsigliano, has provided a sworn statement to this Court that he handed the complaint and other materials to Epstein's representative inside his home. Epstein, on the other hand, has submitted a sworn statement to this Court – through Richard Barnett – that this event never happened. Accordingly, this Court has a pure and simple factual dispute to resolve.

M.J. respectfully requests a brief evidentiary hearing on the matter, at which she would plan to call four witnesses: First, Mr. Marsigliano to testify to his service of the complaint; Second, "Mark" [Last Name Unknown] to testify to his receipt of the

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complaint in Epstein's New York mansion; third, Richard Barnett to establish that he has given a false statement to the Court that no such service had occurred and to develop the reasons why he swore to such a false statement; and finally, Jeffrey Epstein, to establish (either directly or circumstantially) his awareness that a false statement was being submitted to the Court on his behalf and his direct involvement in orchestrating that false statement. M.J. estimates that the hearing could be held in approximately one hour.

The appropriate way to resolve this factual dispute is through such a brief evidentiary hearing. Because Epstein has raised a specific factual dispute under Fed. R. Civ. P. 12(b)(5) – i.e., whether service was made on an individual residing at his dwelling -- M.J. now bears the burden of establishing that particular fact. See *Grand Entertainment Group, Ltd. V. Star Media Sales, Inc.*, 988 F.2d 476, 488 (3d Cir. 1993). The court must then “weigh and determine [the] disputed issues of facts on a Rule 12(b)(5) motion.” *Cranford v. United States*, 359 F.Supp.2d 981, 984 (E.D. Cal. 2005). An evidentiary hearing is the proper vehicle for resolving this particular factual dispute. See *Blair v. City of Worcester*, 522 F.3d 105, 115 (1st Cir. 2008) (reversing district court for refusing to hold an evidentiary hearing where factual issues surrounding service of process were disputed).

II. M.J. HAS PROPERLY SERVED EPSTEIN.

M.J. will establish at the evidentiary hearing that she delivered her complaint and the other required documents to the caretaker at Epstein's mansion in New York, where he often went. This was sufficient service.

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Federal Rule of Civil Procedure 4(e)(2)(B) provides that service can be made by "leaving a copy of [the complaint and other documents] at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there"

Epstein's counsel admit they have received proof of service from Marsigliano attesting that he left M.J.'s complaint with the caretaker at Epstein's residence or usual place of abode. See Epstein's Mot. to Quash at 2 ("As of today, there is a document which purports to be a return of service."). In his motion to quash, Epstein concedes the materials were left at his "vacation home." Barnett Aff. at 1. Epstein's New York Mansion is well known for being the largest private residence in Manhattan and for being owned by Epstein. Given Marsigliano's affidavit and Epstein's concession about the fact that it is his home, the Court should conclude that the New York mansion was in fact Epstein's dwelling or usual place of abode. See *Blair v. City of Worcester*, 522 F.3d 105, 110 (1st Cir. 2008) ("A return of service generally serves as prima facie evidence that service was validly performed."); *Gottlieb v. Sandia Am. Corp.*, 452 F.2d 510, 514 n. 5 (3rd Cir.1971) ("although a marshal's return is not conclusive on the question of service on an agent, it will stand in the absence of proof to the contrary"). The Court may take judicial notice of facts contained in the record in adjudicating service of process issues. *Sidney v. Wilson*, 228 F.R.D. 517 ____ (S.D.NY. 2005). Marsigliano's return of service attesting that the mansion is Epstein's dwelling or usual place of abode is such a fact, particularly given that "in a high mobile and affluent society, it is

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unrealistic to interpret Rule 4(d)(1)¹ so that the person to be served has only one dwelling house or usual place of abode.”²

The only question for the Court, then, is whether M.J. has left a copy of her complaint and other documents with someone at the home. For the reasons explained in Part I above, the Court should find that Marsiglano did in fact leave the complaint. Service was accordingly proper.

It is also clear now that Epstein’s attorneys have received the complaint on his behalf – thereby effectively giving him actual notice of the claim M.J. has filed against him. “To the extent that there is any rule or guide to be followed by the federals in such a case [of disputed service] it is that where actual notice of the commencement of the action and the duty to defend has been received by the one served, the provisions of Rule (4)(d)(1)³ should be liberally construed to effectuate service and uphold the jurisdiction of the court, thus insuring the opportunity for a trial on the merits.” *Karlsson v. Rabinowitz*, 318 F.2d 666, 668 (4th Cir. 1966). Rule 4 is a flexible rule that should be liberally construed so long as a party receives sufficient notice of the complaint, *United Food & Commercial Workers Union v. Alpha Beta Co.*, 736 F.2d 1371, 1382 (9th Cir.1984).” Epstein has received ample notice here.

¹ The Court was referring to an earlier version of what is now Fed. R. Civ. P. 4(e)(2).

² This problem may be particularly acute for the super-wealthy like Epstein. According to Wikipedia, “[i]n addition to his private island in the U.S. Virgin Island (Little St. James Island), Epstein owns a 50,000 square foot townhouse in Manhattan that was formerly owned by Les Wexner, a villa in Palm Beach, Florida, and a fortress on a ranch in Santa Fe, New Mexico. Wikipedia entry for Jeffrey Edward Epstein (visited on Oct. 30, 2010). Accordingly, it may be difficult to identify a single “dwelling” for Epstein.

³ The Court was referring to an earlier version of what is now Fed. R. Civ. P. 4(e)(2).

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III. THE COURT SHOULD IMPOSE SANCTIONS ON EPSTEIN FOR FILING A FRAUDULENT AFFIDAVIT WITH THE COURT.

For the reasons explained above – and based on the testimony M.J. will provide at the evidentiary hearing -- the Court should conclude that Barnett knowingly filed a false affidavit with the Court and that Epstein was responsible for the filing. The Court should then impose appropriate sanctions on Epstein to prevent such future misbehavior. The Court has authority to impose sanctions on Epstein, both under Fed. R. Civ. P. 11(c) (authorizing sanction on a “party”), and under the Court’s inherent power to sanction those who commit fraud before it. See, e.g. *Thomas v. Tenneco Packaging Co., Inc.*, 293 F.3d 1306, 1320 (11th Cir. 2002) (discussing inherent power of the district courts to impose sanctions).

As recounted at greater length in the facts section of this pleading, Epstein is a billionaire who has obstructed other proceedings in the past. Accordingly, the sanctions the Court imposes should be substantial, so that they reflect the need to deter similar behavior by Epstein in the future. As Rule 11 explains, the sanction should be designed “to deter petition of the conduct or comparable conduct” Fed. R. Civ. P. 11(c)(2).

Epstein should also be ordered to pay all the costs and attorneys’ fees M.J. has incurred in responding to his fraudulent argument that he was not served.

IV. THE COURT SHOULD WARN EPSTEIN THAT FURTHER OBSTRUCTION IN THIS CASE WILL NOT BE TOLERATED.

As noted above, Epstein has a history of obstructing similar proceedings with a variety of dilatory tactics. Accordingly, he should be warned that any further obstruction

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in this case – including the submission of any more fraudulent affidavits – will not be tolerated.

V. THE COURT SHOULD ESTABLISH AN EXPEDITED SCHEDULE FOR RESOLVING THIS CASE.

Given Epstein's obvious intent to obstruct and delay these proceedings, M.J. respectfully requests that the Court directly intervene now and set up an appropriate, accelerated schedule for bringing this case to trial. M.J. is fully prepared to proceed expeditiously. And Epstein, a billionaire, has vast financial resources that he can use to prepare this case for trial quickly. Moreover, Epstein has now defended more than twenty civil suits filed against him of a similar nature. Therefore, he is fully aware of the scope of the claims and the kinds of defenses that need to be raised. Therefore, the Court should set up an expedited schedule.

POSITION OF THE PARTIES

M.J. conferred with counsel for defendant Epstein and understands that defendant Epstein objects to all these requests.

CONCLUSION

M.J. requests this Court: enter and Order denying Epstein's Motion To Quash, or alternatively that MJ be granted a hearing to prove that service was properly made; to obtain appropriate sanctions for the perjury and false affidavits filed on behalf of Epstein; to have the court warn Epstein against further improper obstruction; and to set an accelerated discovery schedule in this case; and finally to Order Epstein to immediately file an Answer to MJ's Complaint or alternatively to Strike Epstein's pleadings.

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DATED: November 11, 2010

Respectfully Submitted,

s/ Bradley J. Edwards

Bradley J. Edwards
FARMER, JAFFE, WEISSING,
EDWARDS, FISTOS & LEHRMAN, P.L.
425 North Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301
Telephone (954) 524-2820
Facsimile (954) 524-2822
Florida Bar No.: 542075
E-mail: brad@pathtojustice.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 11, 2010 I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically filed Notices of Electronic Filing.

s/ Bradley J. Edwards

Bradley J. Edwards

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SERVICE LIST

M.J. v. Jeffrey Epstein
United States District Court, Southern District of Florida

Lilly Ann Sanchez
lsanchez@fowler-white.com
Christopher E. Knight
cknight@fowler-white.com
Helaine S. Goodner
hgoodner@fowler-white.com

FOWLER WHITE BURNETT PA
Espirito Santo Plaza, 14th Floor
1395 Brickell Avenue
Miami, FL 33131-3302

Counsel for Defendant, Jeffrey Epstein