

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 9:10-cv-81111-WPD

M.J.,

Plaintiff,

vs.

JEFFREY EPSTEIN and
SARAH KELLEN,

Defendant.

**MOTION OF DEFENDANT JEFFREY EPSTEIN TO QUASH SERVICE OF PROCESS
AND SUPPORTING MEMORANDUM OF LAW**

Defendant Jeffrey Epstein, by and through undersigned counsel, respectfully moves pursuant to Fed. R. Civ. P. 12(b)(5) to quash service of process, and without waiving any available jurisdictional defenses and without making a general appearance, states as follows:

SUMMARY OF ARGUMENT

Plaintiff, M.J., attempted to effect service on Mr. Epstein by leaving a copy of the Summons and Complaint in an unmarked, unaddressed and unpostmarked envelope in a mailbox at Mr. Epstein's vacation house at 9 East 71st Street, New York, New York, at an unknown time between October 8, 2010 and October 13, 2010. Such "service" does not comply with the requirements for service of process under New York, Florida or federal law. The attempt at service of process was ineffective. Service of process should be quashed.

BACKGROUND

1. The Complaint in this action was filed, and a summons was issued as to Jeffrey

Case No. 9:10-cv-81111-WPD

Epstein, on September 17, 2010.

2. On Wednesday, October 13, 2010, an *unmarked, unaddressed and unpostmarked envelope* was discovered in the mailbox at Mr. Epstein's vacation home at 9 East 71st Street, New York, New York. 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. (Ex. A, Aff. Richard Barnett).

3. Service was never delivered to anyone at Mr. Epstein's vacation home in New York. (*Id.*).

4. On or about October 13, 2010, Plaintiff's counsel, Brad Edwards, Esq. upon leaving a hearing in Bankruptcy Court before the Honorable Raymond Ray, advised Christopher Knight, Esq., that Plaintiff M.J. had service on Mr. Epstein at his building in New York. That prompted undersigned counsel's firm to review the court file in the instant case, which indicated that there was no return of service in the court file. As of today, there is a document which purports to be a return of service.

ARGUMENT

NO SERVICE UNDER FLORIDA, NEW YORK OR FEDERAL LAW

In this action, three methods of service of process are authorized by the Federal Rules of Civil Procedure. First, service can be effected pursuant to the procedures "in the state where the district court is located" – i.e. Florida. *See* Fed. R. Civ. P. 4(e)(1). Second, service can be effected in accordance with the procedures "in the state . . . where service is made" – i.e. New York. *Id.* Finally, service can be effected pursuant to federal procedures by delivering a copy of the summons and

Case No. 9:10-cv-81111-WPD

complaint to the individual personally, leaving a copy of same at the individual's dwelling "with someone of suitable age and discretion who resides there" or delivering a copy to an agent authorized to accept service of process. *See Fed. R. Civ. P. 4(e)(1)*. Service was not effected pursuant to any of these three methods of service available to Plaintiff.

No Service Under Florida Law. Under § 48.031(1)(a), Fla. Stat., service "is made by delivering a copy of it to the person to be served with a copy of the complaint, petition, or other initial pleading or paper or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. . . ." Leaving an unmarked envelope with a summon and complaint in a mailbox at a vacation residence does not comply with § 48.031(1)(a), Fla. Stat.

No Service Under New York Law. Under New York law, personal service may be made *inter alia* on an individual by delivering the summons and complaint to the defendant or "to a person of suitable age and discretion at the actual place of business, dwelling place or usual abode of the [defendant]," and by mailing the summons and complaint to the person to be served at his last known address by first class mail. N.Y.C.P.L.R. §308(2). (McKinney 2008). Proof of such service must be "filed with the clerk of the court designated in the summons within twenty days of either such delivery or mailing, whichever is effected later." *Id.* Neither of these procedures was followed in the instant case. Merely leaving an unmarked envelope with a summons and complaint in a mailbox does not comply with New York law on service of process.

No Service under Federal Law. Under Fed. R. Civ. P. 4(e)(2), service is effected by delivering a copy of the summons and complaint to the defendant personally; by leaving a copy of

Case No. 9:10-cv-81111-WPD

same at the "individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or by delivering a copy of same "to an agent authorized by appointment or by law to receive service of process." There is no question that service was not effected pursuant to any of foregoing provisions of federal law.

Accordingly, service of process must be quashed because it was completely ineffective under Florida, New York *and* federal law.

WHEREFORE, Defendant Jeffrey Epstein respectfully requests that service of process be quashed.

Respectfully submitted,

s/Lilly Ann Sanchez
Christopher E. Knight
Fla. Bar No. 607363
cknight@fowler-white.com
Lilly Ann Sanchez
Fla. Bar No. 195677
lsanchez@fowler-white.com
Helaine S. Goodner
Fla. Bar No. 462111
hgoodner@fowler-white.com

FOWLER WHITE BURNETT P.A.
Espirito Santo Plaza, 14th Floor
1395 Brickell Avenue
Miami, Florida 33131-3302
Telephone: (305) 789-9200
Facsimile: (305) 789-9201
Counsel for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I hereby certify that on October 29, 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 counsel of record or pro se parties identified 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 counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

s/Lilly Ann Sanchez

Lilly Ann Sanchez

lsanchez@fowler-white.com

SERVICE LIST

M.J. v. Epstein

United States District Court, Southern District of Florida

Bradley J. Edwards

brad@pathtojustice.com

Farmer, Jaffe, Weissing, Edwards

Fistos & Lehrman, PL

425 North Andrews Avenue, Suite 2

Fort Lauderdale, Florida 33301

Telephone: (954) 524-2820

Facsimile: (954) 524-2822

Attorneys for Plaintiff M.J.

Served via CM/ECF