

**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.

**RENEWED 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. Epsteins' vacation house at 9 East 71st Street, New York, New York, at an unknown time between October 8, 2010 and October 13, 2010, and by purportedly leaving a summons with "Mark" at Mr. Epstein's alleged "residence or usual place of abode." Such purported "service" does not comply with the requirements of service of process under New York, Florida or federal law. The attempt at service of process was ineffective. Service of process should be quashed.

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BACKGROUND

1. The Complaint in this action was filed, and a summons was issued as to Jeffrey Epstein, on September 17, 2010.

2. The Proof of Service filed by Plaintiff (D.E. 11 at 3) recites that the process server left the summons at Mr. Epstein's

residence or usual place of abode with Mark, a person of suitable age and discretion who resides there, on Oct. 8, 2010, and mailed a copy to the individual's last known address

The foregoing proof of service was originally filed on October 29, 2010. (D.E. 5). It was subsequently stricken (D.E. 10), and then refiled on November 2, 2010 (D.E. 11).

3. 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. (Affidavit of Richard Barnett, D.E. 7-1; Exhibit "A" to D.E. 7).

4. According to the Affidavit of Richard Barnett, who was at the premises the entire day of October 8, 2010, no individual by the name of "Mark" worked, resided or was present on the premises of 9 East 71st Street, New York, New York. (Supplemental Affidavit of Richard Barnett, D.E. 12-1; Exhibit "A" to D.E. 12).

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ARGUMENT

NO SERVICE WAS MADE ON MR. EPSTEIN

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 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 the foregoing methods of service.

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” Plaintiff did not comply with § 48.031(1)(a), Fla. Stat. First, 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. Second, although the process server recited that he left the summons with “Mark,” there was no “Mark” on the premises on October 8, let alone a “Mark” who resided at 9 East 71st Street. (*See* Ex. B). Finally, the proof of service does not state that “Mark” was informed of the contents of the complaint, as required by § 48.031(1)(a), Fla. Stat.

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No Service Under New York Law. Under New York law, personal service may be made 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. N.Y.C.P.L.R. § 308(2). (McKinney 2008). In addition, 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.* The foregoing requirements were not satisfied in the instant case. First, merely leaving an unmarked envelope with a summons and complaint in a mailbox does not constitute “mailing” under New York law. Second, there was no substitute service because there was no “Mark” on the premisses on October 8, 2010. (*See* Ex. B). Third, in violation of New York law, proof of service was not filed with the Clerk of the United States District Court for the Southern District of Florida within twenty (20) days of purported service. *See* C.P.L.R. § 308(2). Although the summons was purportedly delivered on October 8, 2010, it was not *filed* in the district court until October 29, 2010 -- after the 20-day period expired. Finally, C.P.L.R. 308(2) requires that the proof of service state the “date, time and place of service” The Affidavit filed by Plaintiff does not state the time or place of service, as required by C.P.L.R. § 308(2).

Failure to comply strictly with the requirements of C.P.L.R. 308(2) requires dismissal. *See, e.g., Fova, Inc. v. Latino Films, Inc.*, 2010 N.Y. Misc. LEXIS 4069, at *7 (Sup. Ct. N.Y. County Aug. 11, 2010) (affidavit of service which failed to state address that the summons was mailed to was a jurisdictional defect requiring dismissal); *Stanley Agency v. Behind the Bench*, 2009 N.Y. Misc. LEXIS 833, at *21 (Sup. Ct. Kings County April 13, 2009) (same).

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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 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.” Service was not effected pursuant to any of foregoing provisions of federal law.

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

Certificate of Good Faith Conference Pursuant to S.D. Fla. L.R. 7.1. I hereby certify that counsel for the movant has conferred with all parties or non-parties who may be affected by the relief sought in this motion in a good faith effort to resolve the issues but has been unable to do so.

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

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Respectfully submitted,

s/Christopher E. Knight

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Counsel for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I hereby certify that on November 10, 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/Christopher E. Knight

Christopher E. Knight

Fla. Bar No. 607363

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SERVICE LIST
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