

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80232-CIV-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

█.

JEFFREY EPSTEIN,

Defendant.

_____ /

ORDER DENYING MOTION TO SEAL

THIS CAUSE comes before the Court on Defendant Jeffrey Epstein's Motion to File Ex Parte and Under Seal, filed July 10, 2008. Defendant seeks to file a Notice of Continued Pendency of Federal Criminal Action under seal.¹ The Court has carefully considered the motion and the record and is otherwise fully advised in the premises.

As stated in the Local Rules for the Southern District of Florida, "proceedings in the United States District Court are public and Court filings are matters of public record." S.D. Fla. L.R. 5.4(A). It is well settled that the media and the public in general possess a common-law right to inspect and copy judicial records. *See Nixon* █. *Warner Communications, Inc.*, 435 U.S. 589, 597 (1978). "The right to inspect and copy records is not absolute, however. As with other forms of access, it may interfere with the administration of justice and hence may have to be curtailed." █ █. *Graddick*, 696 F.2d 796, 803 (11th Cir.1983). This right of access creates

¹All documents filed conventionally shall henceforth be filed directly with the Office of the Clerk in West Palm Beach, Florida. The parties shall *not* file documents conventionally in any other division of the Southern District of Florida.

a presumption in favor of openness of court records, which “must be balanced against any competing interest advanced.” *United States v. Noriega*, 752 F. Supp. 1037, 1040 (S.D. Fla.1990). For example, courts may look to see whether the records sought are for illegitimate purposes. [REDACTED], 696 F.2d at 803. Likewise, the Court may consider whether “the press has already been permitted substantial access to the contents of the records.” *Id.*

In his motion to seal, Defendant has made no argument as to why his Notice of Continued Pendency of Federal Criminal Action should not be made available to the public. Defendant states only that he wishes “[t]o avoid disclosure of confidential material.” (Def. Mot. 2.) The Court finds this justification insufficient to justify keeping this document (filed *ex parte*) under seal. The Court is supported in this conclusion by its decision in a similar case, *In re: Jane Doe*, No. 08-80736-CIV (S.D. Fla. July 11, 2008), in which the Court unsealed, over the objection of the United States Attorney, documents containing similar information regarding Defendant’s criminal plea agreement. Thus, any argument regarding confidentiality is vitiated by the fact that information regarding Defendant’s criminal plea arrangement is already a matter of public record. *See, e.g.,* Sally Apgar, *Victims Object to Palm Beach Billionaire’s Plea Deal in Underage Sex Case*, S. Fla. Sun-Sentinel, July 12, 2008. Similarly, Defendant has not justified the necessity of filing his Notice *ex parte*. As such, Defendant’s Motion to Seal shall be denied.

Accordingly, it is **ORDERED AND ADJUDGED** that Defendant’s Motion to File Ex Parte and Under Seal is **DENIED**. The Clerk shall **UNSEAL** docket entries 14 and 15 and make them available for public inspection through CM/ECF at the earliest possible time. Defendant is further **ORDERED** to serve a copy of his Notice on Plaintiff within five (5) days of the date of

entry of this Order.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County,
Florida, this 16th day of July, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to:
all counsel of record

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:08-cv-80232-KAM
Internal Use Only**

Doe No. 3 ■ Epstein
Assigned to: Judge Kenneth A. Marra
Case: 9:08-cv-80119-KAM
Cause: 28:1332 Diversity-Personal Injury

Date Filed: 03/05/2008
Jury Demand: Plaintiff
Nature of Suit: 360 P.I.: Other
Jurisdiction: Diversity

Plaintiff

Jane Doe No. 3

represented by **Adam D. Horowitz**
Herman &Mermelstein, P.A.
18205 Biscayne Blvd.
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 305-931-0877
Email: ahorowitz@hermanlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jeffrey Marc Herman
Herman &Mermelstein
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 931-0877
Email: jherman@hermanlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Stuart S. Mermelstein
Herman &Mermelstein
18205 Biscayne Boulevard
Suite 2218
Miami, FL 33160
305-931-2200
Fax: 931-0877
Email: Irivera@hermanlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED



Defendant

Jeffrey Epstein

represented by **Jack Alan Goldberger**
Atterbury Goldberger &Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
561-659-8300
Fax: 835-8691
Email: jagesq@bellsouth.net
ATTORNEY TO BE NOTICED

Michael Ross Tein
Lewis Tein
3059 Grand Avenue
Suite 340

Coconut Grove, FL 33133
 305-442-1101
 Fax: 442-6744
 Email: tein@lewistein.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
03/05/2008	<u>1</u>	COMPLAINT against Jeffrey Epstein. Filing fee \$350. Receipt No. 542467, filed by Jane Doe No. 3.(caw) (Entered: 03/05/2008)
03/05/2008	<u>2</u>	Summons Issued as to Jeffrey Epstein. (caw) (Entered: 03/05/2008)
03/11/2008	<u>3</u>	ORDER requiring counsel to confer, file joint scheduling report and file joint discovery report;Signed by Judge Kenneth A. Marra on 03/11/2008.(bs) (Entered: 03/11/2008)
05/22/2008	<u>4</u>	AFFIDAVIT of Service for Summons and Complaint served on Jeffrey Epstein on May 7, 2008, filed by Jane Doe No. 3. (Herman, Jeffrey) (Entered: 05/22/2008)
05/29/2008	<u>5</u>	Plaintiff's MOTION for Entry of Default by Clerk <i>Against Defendant</i> by Jane Doe No. 3. (Attachments: # <u>1</u> Exhibit A and B, # <u>2</u> Text of Proposed Order Default Order)(Horowitz, Adam) (Entered: 05/29/2008)
06/13/2008	<u>6</u>	NOTICE of Attorney Appearance by Jack Alan Goldberger on behalf of Jeffrey Epstein (Goldberger, Jack) (Entered: 06/13/2008)
06/13/2008	<u>7</u>	RESPONSE to Motion re <u>5</u> Plaintiff's MOTION for Entry of Default by Clerk <i>Against Defendant Jane Doe No. 3</i> filed by Jeffrey Epstein. Replies due by 6/23/2008. (Attachments: # <u>1</u> Affidavit of Richard Barnett)(Goldberger, Jack) (Entered: 06/13/2008)
06/20/2008	<u>8</u>	Defendant's MOTION to Stay by Jeffrey Epstein. Responses due by 7/10/2008 (Goldberger, Jack) (Entered: 06/20/2008)
06/20/2008	<u>9</u>	Defendant's MOTION for Extension of Time to File Answer <i>Or Otherwise Respond To Complaint</i> by Jeffrey Epstein. (Goldberger, Jack) (Entered: 06/20/2008)
06/24/2008	<u>10</u>	MEMORANDUM in Support re <u>5</u> Plaintiff's MOTION for Entry of Default by Clerk <i>Against Defendant</i> filed by Jane Doe No. 3. (Herman, Jeffrey) (Entered: 06/24/2008)
07/01/2008	<u>11</u>	NOTICE by Jeffrey Epstein <i>Concerning Motion To Stay [DE 8]</i> (Attachments: # <u>1</u> Exhibit "A" Final Disposition Sheets)(Goldberger, Jack) (Entered: 07/01/2008)
07/08/2008	<u>12</u>	NOTICE of Attorney Appearance by Michael Ross Tein on behalf of Jeffrey Epstein (Tein, Michael) (Entered: 07/08/2008)
07/10/2008	<u>13</u>	Plaintiff's MOTION for Extension of Time to File Response as to <u>8</u> Defendant's MOTION to Stay by Jane Doe No. 3. (Attachments: # <u>1</u> Text of Proposed Order)(Horowitz, Adam) (Entered: 07/10/2008)
07/10/2008	14	Sealed Document. (yc) (Entered: 07/10/2008)
07/10/2008	15	Sealed Document. (yc) (Entered: 07/10/2008)
07/16/2008	<u>16</u>	ORDER denying motion to file Ex Parte and Under Seal. The clerk shall unseal DE 14 and 15 and make them available for public inspection through CM/ECF at the earliest possible time. Signed by Judge Kenneth A. Marra on 7/16/08. (ir) (Entered: 07/16/2008)
07/16/2008	<u>17</u>	ORDER TO SHOW CAUSE why default should not be entered against Defendant. Show Cause Response due by 7/28/2008. Signed by Judge Kenneth A. Marra on 7/16/08. (ir) (Entered: 07/16/2008)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

NO. 08-80232-CIV-MARRA/JOHNSON

JANE DOE NO. 3,

Plaintiff,

■

JEFFREY EPSTEIN,

Defendant.

**ORDER TO SHOW CAUSE WHY DEFAULT SHOULD NOT BE ENTERED
AGAINST DEFENDANT JEFFREY EPSTEIN**

THIS CAUSE comes before the Court on Plaintiff's Motion for Entry of Default by Clerk (DE 5), filed May 29, 2008. The motion is now fully briefed and is ripe for review. The Court has carefully considered the motion and is otherwise fully advised in the premises.

Background

On March 5, 2008, Plaintiff Jane Doe No. 3 ("Plaintiff") filed the instant action against Jeffrey Epstein ("Defendant"), alleging claims of sexual assault and intentional infliction of emotional distress. (DE 1.) Plaintiff's process server attempted to deliver a copy of the summons and complaint to Defendant personally on April 23, April 24, and May 1, 2008, at his residence in New York City. (DE 4.) None of these attempts were successful. On May 7, 2008, the process server left a copy of the summons and complaint with "'John Smith,' Assistant & House Staff Employee who refused true name." (DE 4.) The process server also mailed a copy of the summons and complaint to Defendant on May 5, 2008, via first class mail. (DE 4.) The

envelope was marked “personal and confidential” and did not indicate that the envelope was from an attorney or related to a legal action. (DE 4.)

Discussion

Rule 4(e) of the Federal Rules of Civil Procedure states that an individual may be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). Alternatively, service may be made by leaving a copy of the summons and complaint at the individual’s place of abode “with someone of suitable age and discretion who resides there.” Fed. R. Civ. P. 4(e)(2)(B).

Plaintiff claims that service in this case is valid pursuant to either Fed. R. Civ. P. 4(e)(2)(B) or Florida law. Like the Federal Rules, Florida law requires that process be left at the individual’s usual place of abode “with any person residing therein who is 15 years of age or older.” Fla. Stat. § 48.031(1)(a). The affidavit of service (DE 4) states that the summons and complaint were left with “John Smith” at Defendant’s usual place of abode. From this declaration, the Court cannot determine whether “John Smith” resides at the Manhattan apartment. Further, Defendant has submitted the affidavit of Richard Barnett, who avers that he received copies of the summons and complaint on May 7, 2008, from the process server. (DE 9 Ex. A.) Because Plaintiff has provided no indication to suggest that “John Smith” resides at the apartment, the Court concludes that Plaintiff did not effect valid service on Defendant under Fed. R. Civ. P. 4(e)(2)(B) or Fla. Stat. § 48.031(1)(a).

The Court does not believe that Plaintiff’s request for discovery on the issue of service is necessary, because service of process was made pursuant to New York law. Under New York

law, personal service may be made on an individual by

delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or *usual place of abode* of the person to be served *and by either mailing the summons to the person to be served at his or her last known residence* or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such delivery and mailing to be effected within twenty days of each other.

N.Y. C.P.L.R. § 308(2) (McKinney 2008) (emphasis added). New York law does *not* require the person receiving the summons and complaint at the individual’s place of abode to reside at that location. *See, e.g., Boston Safe Deposit and Trust Co. v. Morse*, 779 F. Supp. 347, 350 (S.D.N.Y. 1991); *Al Fayed v. Barak*, 833 N.Y.S. 2d 500, 501 (N.Y. App. Div. 2007).

In this case, the affidavit of service states that “John Smith” was a person of suitable age and discretion who accepted a copy of the summons and complaint at Defendant’s actual apartment. (DE 4.) Thus, under New York law, delivery of the summons and complaint to “John Smith” was appropriate. Because the summons and complaint were mailed to Defendant and delivered to his residence within twenty days of each other, Plaintiff took all necessary steps to serve Defendant under New York law.

As Defendant recognizes, New York law also requires that proof of service 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.” N.Y. C.P.L.R. § 308(2). Here, Plaintiff is in compliance with this requirement as well: delivery was made on May 7, 2008, and proof of service was filed with the Clerk of the Court on May 22, 2008. (DE 4.) Thus, service was deemed complete as of

June 2, 2008, under New York law. *See* N.Y. C.P.L.R. § 308(2) (stating “service shall be complete ten days after” filing of proof of service).

Nevertheless, Defendant’s analysis is not entirely correct. In calculating when Defendant’s response was due, the Court turns to Fed. R. Civ. P. 12(a), which states that a defendant must serve an answer within twenty days of being served with the summons and complaint. Fed. R. Civ. P. 12(a)(1)(A)(i). Under this rule, Defendant was required to respond to the Complaint within twenty days from the receipt of the summons; the rule does not suggest a longer period of time is available when substituted service is used to serve a defendant. While Rule 4(e)(1) allows Plaintiff to serve process on Defendant in the method permitted by New York, Rule 4(e)(1) does not alter the twenty day period specified by Rule 12(a). In other words, under Rules 4(e)(1) and 12(a), the Court is not bound by New York’s proof of service filing requirement nor New York’s “completion” date in determining when Defendant’s answer needed to be filed. *Beller & Keller v. Tyler*, 120 F.3d 21, 25-26 (2d Cir. 1997) (reconciling the deadlines imposed by Rule 12(a) and N.Y. C.P.L.R. § 308). Instead, once Defendant received a copy of the summons and complaint, Defendant had twenty days to respond. *Id.* (“[A] defendant has twenty days from the receipt of the summons to file an answer This is so even if . . . the defendant is served pursuant to a state law method of service and the state law provides a longer time in which to answer.”). Thus, Defendant’s response was due on May 27, 2007.¹

¹In *Tyler*, the court acknowledged that, because service was made in part by mail, the defendant may have the benefit of three extra days to respond per Fed. R. Civ. P. 6(e). *Tyler*, 120 F.3d at 26. In this case, Plaintiff’s server mailed the summons and complaint on May 5, 2008. Thus, under this scheme, Defendant would have had until May 28, 2008, to respond. Either way, Defendant failed to appear in his case until June 13, 2008.

Conclusion

Accordingly, Defendant is hereby **ORDERED** to file a report with the Court showing good cause why default should not be entered for failure to respond to the Complaint in a timely manner within ten (10) days from the date of entry of this Order. Plaintiff may respond to Defendant's report within the time allotted by the Local Rules. Failure to respond to this Order shall result in an entry of default against Defendant.

DONE AND ORDERED in Chambers at West Palm Beach, Palm Beach County,
Florida, this 16th day of July, 2008.



KENNETH A. MARRA
United States District Judge

Copies furnished to:
all counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80232-MARRA-JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

FILED BY
08 JUL 10 PM 12:23
STEVEN H. LARIMORE
CLERK U.S. DIST. CT.
S.D. OF FLA. 2 HIA

**FILED *EX PARTE*
UNDER SEAL**

DEFENDANT'S MOTION TO FILE *EX PARTE* AND UNDER SEAL

Pursuant to S.D. Fla. L.R. 5.4, defendant Jeffrey Epstein hereby moves to file his Notice of Continued Pendency of Federal Criminal Action, as well as this motion, *ex parte* and under seal, stating as follows:

1. In support of his motion to stay [DE 8], defendant has herewith filed a Notice of Continued Pendency of Federal Criminal Action.

2. The Notice relates to a confidential agreement between the United States Attorney's Office for the Southern District of Florida and the defendant.

3. The information contained in the Notice is material to this Court's consideration of Epstein's motion to stay.

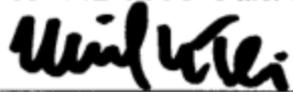
4. To avoid disclosure of confidential material, Epstein requests leave to file the Notice, and this motion, *ex parte* and under seal.

5. Pending a ruling from this Court, Epstein has not served this motion or the Notice on counsel for plaintiff.

WHEREFORE, defendant Jeffrey Epstein respectfully requests leave to file this motion and his Notice of Continued Pendency of Federal Criminal Action, *ex parte* and under seal.

Respectfully submitted,

LEWIS TEIN, P.L.
3059 Grand Avenue, Suite 340
Coconut Grove, Florida 33133
Tel: 305 442 1101 Fax: 305 442 6744

By:  _____

GUY A. LEWIS
Fla. Bar No. 623740
lewis@lewistein.com
MICHAEL R. TEIN
Fla. Bar No. 993522
tein@lewistein.com

ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, Florida 33401
Tel. 561 659 8300 Fax. 561 835 8691

By: JACK A. GOLDBERGER
Fla. Bar No. 262013
jgoldberger@agwpa.com

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion, in accordance with S.D. Fla. L.R. 5.4, has not been served on opposing counsel and was filed under seal on July 10, 2008.

A handwritten signature in black ink, appearing to read "M. Tein", written over a horizontal line.

Michael R. Tein

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80232-MARRA-JOHNSON

JANE DOE NO. 3,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.

FILED B
08 JUL 10 PM 12:23
STEVEN H. LARHORE
CLERK U.S. DIST. CT.
S.D. OF FLA. - MIA

**FILED EX PARTE
UNDER SEAL**

15/2

**NOTICE OF CONTINUED PENDENCY
OF FEDERAL CRIMINAL ACTION**

Defendant Jeffrey Epstein hereby notifies the Court of the continued pendency of a federal criminal action against him, stating as follows:

On June 30, 2008, after defendant Jeffrey Epstein filed his motion to stay [DE 8], he was sentenced in the state-court criminal case described in that motion (*State of Florida v. Jeffrey Epstein*, Case No. 2006 CF 09454 AXX, Fifteenth Judicial Circuit, Palm Beach County) (the "Florida Criminal Action"). As explained below, the parallel federal criminal action against him described in that motion (*In re Grand Jury*, No. FGJ 07-103(WPB), United States District Court for the Southern District of Florida) (the "Federal Criminal Action"), remains pending.

On September 24, 2007, the United States Attorney's Office for the Southern District of Florida ("USAO"), represented by Assistant United States Attorney Ann Marie C. Villafana, Esq., and Mr. Epstein, entered into a deferred-prosecution agreement ("Agreement"), which the parties agreed to keep confidential. Prior to entering into that Agreement, Ms. Villafana advised that she had already prepared a federal criminal indictment against Mr. Epstein in the Federal Criminal Action.

Under the Agreement, beginning on the date Mr. Epstein began serving his sentence in the Florida Criminal Action, the USAO agreed to suspend its grand jury investigation in the Federal Criminal Action. The USAO, however, retains the

right to reactivate the grand jury and indict Mr. Epstein should he breach any part of the Agreement during its term, which runs for 33 months, beginning on the date Mr. Epstein began serving his sentence in the Florida Criminal Action. Accordingly, the Federal Criminal Action will remain pending against Mr. Epstein for 33 months from June 30, 2008.

Mr. Epstein will provide the Court with a copy of the confidential Agreement for its *in-camera* inspection at the Court's request.

WHEREFORE, Defendant Jeffrey Epstein hereby notifies the Court of the continued pendency of the Federal Criminal Action.

Respectfully submitted,

LEWIS TEIN, P.L.
3059 Grand Avenue, Suite 340
Coconut Grove, Florida 33133
Tel: 305 442 1101
Fax: 305 442 6744

By: 

GUY A. LEWIS
Fla. Bar No. 623740
lewis@lewistein.com
MICHAEL R. TEIN
Fla. Bar No. 993522
tein@lewistein.com

ATTERBURY, GOLDBERGER & WEISS, P.A.
250 Australian Avenue South, Suite 1400
West Palm Beach, Florida 33401
Tel. 561 659 8300
Fax. 561 835 8691

By: Jack A. Goldberger
Fla. Bar No. 262013
jgoldberger@agwpa.com

Attorneys for Defendant Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this motion, in accordance with S.D. Fla. L.R. 5.4, has not been served on opposing counsel and was filed under seal on July 10, 2008.



Michael R. Tein