

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

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

M.J.,

Plaintiff,

vs.

JEFFREY EPSTEIN and  
[REDACTED]

Defendant.

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**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 71<sup>st</sup> 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

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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 71<sup>st</sup> 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

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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 summons 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

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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

Lilly Ann Sanchez  
Fla. Bar No. 195677

Helaine S. Goodner  
Fla. Bar No. 462111

FOWLER WHITE BURNETT P.A.

Telephone: [REDACTED]  
Facsimile: [REDACTED]  
*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

[REDACTED] m

**SERVICE LIST**

*M.J. v. Epstein*

**United States District Court, Southern District of Florida**

Bradley J. Edwards

[REDACTED]  
Farmer, Jaffe, Weissing, Edwards  
Fistos & Lehrman, PL

[REDACTED]  
Telephone: [REDACTED]

Facsimile: [REDACTED]

Attorneys for Plaintiff M.J.

Served via CM/ECF

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M.J.,

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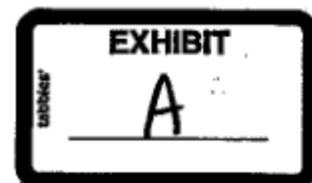
JEFFREY EPSTEIN and  
[REDACTED]

Defendant.

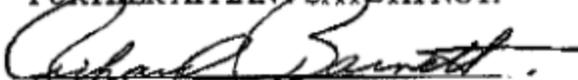
**AFFIDAVIT OF RICHARD BARNETT**

I Richard Barnett, being duly sworn, do depose and state as follows:

1. I am over the age of 18, am otherwise competent to testify and base the following on my personal knowledge.
2. On Wednesday, October 13, 2010, an *unmarked and unpostmarked envelope* was discovered in the mailbox at Mr. Epstein's vacation home in New York City at 9 East 71<sup>st</sup> 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.
3. Service was never delivered to anyone at Mr. Epstein's house.

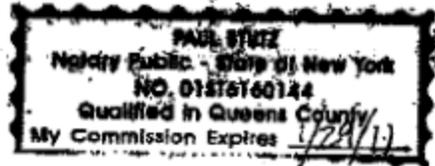


FURTHER AFFIANT SAYETH NOT.

  
RICHARD BARNETT

Sworn and subscribed before me this 29<sup>th</sup> day of October, 2010 by Richard Barnett who is personally known to me or has produced NY Drivers Licence as identification.

  
NOTARY PUBLIC  
STATE OF NEW YORK



MY COMMISSION EXPIRES: 1/29/11