

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
MICHIGAN, SOUTHERN DIVISION

Kenneth Nixon v. Moises Jimenez, et al.

Nixon · No. 2:23-cv-11547 · Decided December 5, 2025

SUMMARY

The United States District Court for the Eastern District of Michigan grants a motion permitting alternative service of a subpoena on witness Charmetria James. The court finds that repeated unsuccessful personal-service attempts demonstrated diligence and authorizes service by first-class mail with posting, delivery through a resident over age fifteen, or electronic or telephonic communication.

CASE DETAILS

COURT	United States District Court for the Eastern District of Michigan, Southern Division
WRITING FOR THE COURT	Susan K. DeClercq
JURISDICTION	United States District Court for the Eastern District of Michigan, Southern Division
DECIDED	December 5, 2025
DOCKET	2:23-cv-11547
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved for an order permitting alternative service of a subpoena on prospective witness Charmetria James during discovery.
STANDARD OF REVIEW	The court applied the standards governing alternative service of a subpoena under Federal Rule of Civil Procedure 45(b), requiring diligent efforts to effectuate service and alternative means reasonably calculated to achieve actual delivery.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Kenneth Nixon v. Moises Jimenez, et al.

TOPICS

- service of process
- discovery dispute
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

QUESTIONS PRESENTED

1. Whether Defendants demonstrated sufficient diligence and inability to effectuate personal service of a subpoena on Charmetria James to warrant alternative service.
2. Whether the requested alternative methods of service were reasonably calculated to achieve actual delivery.

HOLDINGS

1. Alternative service was warranted because Defendants demonstrated an inability to effectuate personal service after diligent efforts.
2. The requested alternative methods were reasonably calculated to achieve actual delivery, including first-class mail with posting, service through a household member over age fifteen, and electronic or telephonic communication when reasonably available.

FACTUAL BACKGROUND

Defendants identified Charmetria James as a potential trial witness and attempted to serve her with a subpoena at her known address. A process server attempted personal service on three separate days, left a contact card, and received a call from James stating that she did not have time for the matter; Defendants' counsel also made four unsuccessful telephone attempts. Defendants mailed a copy of the subpoena and sought authorization for service by first-class mail with posting, through a household member over age fifteen, or by electronic or telephonic communication.

PROCEDURAL HISTORY

Nixon filed a constitutional-rights action arising from his investigation and prosecution for an arson-murder. During discovery, Defendants sought alternative service of a subpoena on James after repeated unsuccessful attempts at personal service, telephone contact, and mailing. The district court granted the motion but stated that the order was not final and did not close the case.

DISPOSITION

other

CASES CITED

- OceanFirst Bank v. Hartford Fire Insurance Co., 794 F. Supp. 2d 752, 754 (E.D. Mich. 2011)
- Brow Art Mgmt., LLC v. Idol Eyes Franchise, LLC, No. 23-cv-11434, 2024 WL 3851585, at *1 (E.D. Mich. Aug. 16, 2024)
- Asian Food Serv., Inc. v. Travelers Cas. Ins. Co. of Am., No. 18-13454, 2020 WL 230134, at *2 (E.D. Mich. Jan. 15, 2020)

- Exp. Dev. Canada v. SDR Group, Inc., No. 19-11536, 2020 WL 1888825, at *2 (E.D. Mich. 2020)

OPINION

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION KENNETH NIXON, Plaintiff, Case No. 2:23-cv-11547 v. Honorable Susan K. DeClercq United States District Judge MOISES JIMENEZ, et al., Defendants.
_____/ OPINION AND ORDER GRANTING DEFENDANT’S MOTION FOR ALTERNATIVE SERVICE (ECF No. 111) On June 28, 2023, Plaintiff Kenneth Nixon sued Detroit Police Department Officers, alleging constitutional violations in connection with Defendants’ investigation and prosecution of Nixon for an arson-murder he did not commit.

ECF No. 1. For over a year, the parties have engaged in discovery. See ECF No. 72. As part of that process, Defendants assert that, without success, they “have made numerous attempts to contact and serve” a subpoena on a witness, Charmetria James, identified by both parties as someone they may call to testify at trial. ECF No. 111 at PageID.3649. Now, Defendants move this Court for an order permitting alternative service.

ECF No. 111. Because the Defendants have made repeated attempts to serve James, who appears to be evading service, this Court will grant their motion for alternative service. As a general rule, parties must serve a subpoena by “delivering a copy to the named person.” FED. R. CIV. P. 45(b). But courts may permit service by alternative means when a “party seeking evidence demonstrates an inability to effectuate service after diligent effort.” *OceanFirst Bank v. Hartford Fire Ins.*

Co., 794 F. Supp. 2d 752, 754 (E.D. Mich. 2011); see also *Brow Art Mgmt., LLC v. Idol Eyes Franchise, LLC*, No. 23-cv-11434, 2024 WL 3851585, at *1 (E.D. Mich. Aug. 16, 2024) (citing *OceanFirst Bank*, 794 F. Supp. 2d at 754). If such diligence is shown, the moving party must also demonstrate that the requested alternative means are “reasonably calculated to achieve actual delivery.” *Id.* As for what alternative means of service are typically allowed, “first-class mail to the actual address of the intended recipient generally will suffice ... especially when the mailing is accompanied by posting at the known address of the prospective witness.” *Id.* (internal citation omitted).

Here, Defendants have demonstrated diligence in trying to serve James. According to Defendants, a process server attempted to achieve personal service on three separate days between October 6 and 8, 2025, at James’s known address. ECF No. 111 at PageID.3649; see also ECF No. 111-2 (affidavit of non-service). That process server also left a contact card at James’s address, and James called the process server to tell him that she did not “have time for this now.” *Id.* In addition to those attempts at delivery by the process server, Defendants’ counsel unsuccessfully attempted to reach James by phone on four separate dates.

Id. Further, Defendants mailed a copy of the subpoena to James on October 1, 2025. ECF No. 111-3. These repeated attempts demonstrate a diligent effort to effectuate service. Cf. *Asian Food Serv., Inc. v. Travelers Cas. Ins. Co. of Am.*, No. 18-13454, 2020 WL 230134, at *2 (E.D. Mich. Jan. 15, 2020) (allowing alternative service where process server made attempts on three days and left a contact card with no response).

The alternative means of service requested by Defendants are also reasonably calculated to achieve actual delivery. Specifically, Defendants request service by three alternative means: (1) first-class mail accompanied by posting at James's known address; (2) permitting service via an individual over the age of fifteen who resides with James; or (3) electronic or telephonic communication to James.

ECF No. 111 at PageID.3651. As noted above, courts observed that the first requested means will generally satisfy the "reasonably calculated" standard. See *OceanFirst Bank*, 794 F. Supp. 2d at 754. Moreover, this Court finds that the other two requested means are reasonable here because James has evinced an intent to evade service. Cf. *Exp. Dev. Canada v. SDR Group, Inc.*, No. 19-11536, 2020 WL 1888825, at *2 (allowing such means where "the record suggests that the witness may be evading service").

Accordingly, it is ORDERED that Plaintiff's Motion for Alternate Service, ECF No. 111, is GRANTED. It is FURTHER ORDERED that Defendants may effectuate service of a subpoena on Charmetria James by means of the following: 1. Service by sending the subpoena and any applicable order of this Court via first-class mail, to Ms. James last known address AND firmly affixing a copy of the subpoena and this any applicable Court Orders to the front door of the address that Ms. James responded to by telephone; 2.

Permitting service via an individual over the age of 15 years old that resides at Ms. James address; or 3. If any email, text messaging, or other network or telecommunication address for Ms. James is known or reasonably available to the Defendants, sending a copy of the subpoena and relevant Court Orders to Ms. James's reasonably available means of electronic communication.

This is not a final order and does not close the above-captioned case. /s/Susan K. DeClercq
SUSAN K. DeCLERCQ United States District Judge Dated: December 5, 2025