

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

**In Re: Oil Spill by the Oil Rig “Deepwater  
Horizon” in the Gulf of Mexico, on  
April 20, 2010**

**MDL 2179**

**SECTION: J**

**This Document Relates to:  
*Donovan v. Barbier, et al.*,  
2:21-cv-00237**

**JUDGE BARBIER**

**MAG. JUDGE CURRAULT**

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**BRIAN J. DONOVAN’S MEMORANDUM OF LAW IN SUPPORT OF HIS  
MOTION FOR CLARIFICATION**

The following Memorandum is respectfully submitted in support of Brian J. Donovan’s Motion for Clarification.

**BACKGROUND**

On March 19, 2021, Stephen J. Herman (“Herman”) and James P. Roy (“Roy”) file a Motion for Sanctions Against Brian J. Donovan (“Donovan”) and to Enjoin Further Frivolous Filings (Rec. Doc. 26999).

On March 22, 2021, Patrick A. Juneau (“Juneau”) files a Motion for Injunctive Relief and Consideration of Sanctions Against Donovan. (Rec. Doc. 27003).

On April 11, 2021, Donovan files his Response in Opposition to Motion for Sanctions and to Enjoin Further Frivolous Filings (Rec. Doc. 27035) and his Response in Opposition to Motion for Injunctive Relief and Consideration of Sanctions (Rec. Doc. 27036).

On April 20, 2021, Donovan files his Motion for Leave to File Sur-Reply on Motions for Sanctions and Injunctive Relief (Rec. Doc. 27053). Donovan respectfully moves the Court to grant him leave to file a Sur-Reply to the Motion for Sanctions and to Enjoin Further Frivolous

Filings by Herman and Roy and the Motion for Injunctive Relief and Consideration of Sanctions by Juneau so that Donovan may explain the extent to which Herman and Roy, and Juneau continue to engage in “Sewer Service” which subverts the purpose of service and threatens to disrupt the administration of justice.

On April 21, 2021, Donovan *receives for the first time*, via Lexis Nexis File & Serve, this Honorable Court’s Order (Rec. Doc. 27017), filed on March 31, 2021, which provides, in pertinent part,

“Two motions are before the Court:

1. Stephen J. Herman and James P. Roy’s Motion for Sanctions Against Brian J. Donovan and to Enjoin Further Frivolous Filings (Rec. Doc. 26999)
2. Patrick A. Juneau’s Motion for Injunctive Relief and Consideration of Sanctions Against Brian J. Donovan. (Rec. Doc. 27003)

IT IS ORDERED that Brian J. Donovan *shall file a written response to both motions (limited to 25 pages, double-spaced) by no later than Wednesday, April 21, 2021. Any reply by movers (limited to 10 pages, double-spaced) shall be filed by no later than Wednesday, April 28, 2021.*”

On April 21, 2021, Donovan receives for the first time, via Lexis Nexis File & Serve, this Honorable Court’s Order (Rec. Doc. 27047), filed on April 16, 2021, which provides, in pertinent part, “IT IS HEREBY ORDERED that said Motion be and is hereby GRANTED, and that Edward W. Trapolin (Bar No. 27667), and Gus A. Fritchie, III (Bar No. 5751) of Irwin Fritchie Urquhart & Moore LLC, 400 Poydras Street, Suite 2700, New Orleans, LA 70130 be enrolled as additional counsel of record on behalf of Stephen J. Herman in the above captioned matter...”

On April 21, 2021, Donovan receives for the first time, via Lexis Nexis File & Serve, this Honorable Court’s Order (Rec. Doc. 27048), filed on April 16, 2021, which provides, in pertinent part, IT IS HEREBY ORDERED that said Motion be and is hereby GRANTED, and

that Edward W. Trapolin (Bar No. 27667), and Gus A. Fritchie, III (Bar No. 5751) of Irwin Fritchie Urquhart & Moore LLC, 400 Poydras Street, Suite 2700, New Orleans, LA 70130 be enrolled as additional counsel of record on behalf of James Parkerson Roy in the above captioned matter...”

## **LAW AND ARGUMENT**

### **I. Local Rule 7.2**

Local Rule 7.2 provides “Counsel filing a motion must, at the time of filing, notice it for submission within a reasonable time. Unless otherwise ordered by the court, motions must be filed not later than the fifteenth day preceding the date assigned for submission and actual notice of the submission date must be given to opposing counsel at least fifteen days before the submission date, regardless of which *FRCP 5(b)* service method is used. The motion and supporting memorandum must also be served with the notice.”

### **II. Local Rule 7.5**

Pursuant to Local Rule 7.5, “Each party opposing a motion must file and serve a memorandum in opposition to the motion with citations of authorities no later than eight days before the noticed submission date.”

### **III. Herman and Roy, and Juneau Engaged in “Sewer Service”**

In their Certificate of Service, Herman and Roy certify to this Honorable Court “that the above and foregoing Motion for Sanctions and to Enjoin Further Frivolous Filings has been served on All Counsel by electronically uploading the same to File and ServeXpress in accordance with Pretrial Order No. 12, as amended, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in

accordance with the procedures established in MDL 2179, on this 19th day of March 2021.” This is false and misleading. Donovan never received a notice of electronic filing from the Clerk of Court.

On March 20, 2021 at 3:27 AM, Donovan received via email the “03/19/2021 Daily E-Service Summary for LA US District Court Eastern District E-Service-Oil Spill” from File and ServeXpress. (*See* Exhibit “A”). There is no mention of the Motion for Sanctions and to Enjoin Further Frivolous Filings allegedly filed by Herman and Roy. Donovan, curious about a filing which referred to a case in 2003, opened the apparently unrelated motion filed by Irwin Fritchie Urquhart and Moore LLC. Only as a result of this fortuitous curiosity did Donovan learn about the motion filed by Herman and Roy. The filing was exceptionally well-disguised.

In his Certificate of Service, Juneau certifies to this Honorable Court “that the above and foregoing Memorandum has been served on All Counsel by electronically uploading the same to Lexis Nexis File & Serve in accordance with Pretrial Order No. 12, as amended, and that the foregoing was electronically filed with the Clerk of Court of the United States District Court for the Eastern District of Louisiana by using the CM/ECF System, which will send a notice of electronic filing in accordance with the procedures established in MDL 2179, on this 22nd day of March, 2021.” This is false and misleading. Donovan never received a notice of electronic filing from the Clerk of Court.

On March 23, 2021 at 3:35 AM, Donovan received via email the “03/22/2021 Daily E-Service Summary for LA US District Court Eastern District E-Service-Oil Spill” from File and ServeXpress. (*See* Exhibit “B”). There is a Motion for Injunctive Relief and Consideration of Sanctions but there is no reference to Donovan or the *Donovan v. Barbier, et al.* case. Donovan,

now on alert as a result of the previous “sewer service” by Herman and Roy, opened the apparently unrelated motion filed by Stanley Reuter Ross Thornton & Alford LLC. Only after opening, did Donovan learn about the motion filed by Juneau. The filing was exceptionally well-disguised.

Donovan never received a Notice of Submission from Herman and Roy. Donovan never received a Notice of Submission from Juneau. In sum, the “Sewer Service” tactic employed by Herman and Roy, and Juneau has kept Donovan completely in the dark.

The strategy employed by Herman and Roy, and Juneau is simple. Don’t let Donovan know about the Motion for Sanctions and to Enjoin Further Frivolous Filings or the Motion for Injunctive Relief and Consideration of Sanctions until this Honorable Court has issued its Orders granting the motions. This is the definition of “Sewer Service.”

### **THE ISSUES REQUIRING CLARIFICATION**

#### **Issue No. 1**

Whether the Court requires Donovan to combine his two Responses in Opposition (Rec. Doc. 27035 and Rec. Doc. 27036) which were timely filed on April 11, 2021 and refile a single Response in Opposition in order to be in compliance with this Honorable Court’s Order (Rec. Doc. 27017) when Donovan did not receive this Order until April 21, 2021 and it would therefore be impossible for the refile to comply with Local Rule 7.5.

As explained *supra*, Donovan filed his Response in Opposition to Motion for Sanctions and to Enjoin Further Frivolous Filings (Rec. Doc. 27035) and his Response in Opposition to Motion for Injunctive Relief and Consideration of Sanctions (Rec. Doc. 27036) on April 11, 2021.

As explained *supra*, Herman and Roy, and Juneau have engaged in “Sewer Service.” Nonetheless, fortuitously each Response is in compliance with Local Rule 7.5 (“Each party

opposing a motion must file and serve a memorandum in opposition to the motion with citations of authorities no later than eight days before the noticed submission date.”).

On April 21, 2021, Donovan *received for the first time*, via Lexis Nexis File & Serve, this Honorable Court’s Order (Rec. Doc. 27017), filed on March 31, 2021, which provides, in pertinent part,

“IT IS ORDERED that Brian J. Donovan *shall file a written response to both motions (limited to 25 pages, double-spaced) by no later than Wednesday, April 21, 2021.*”

**Issue No. 2**

Whether the Motion for Sanctions and to Enjoin Further Frivolous Filings (Rec. Doc. 26999) complies with the Federal Rules of Civil Procedure and this Honorable Court’s Local Rules and precedent when Edward W. Trapolin and Gus A. Fritchie, III, Counsel who filed the motion on behalf of Herman and Roy, are not enrolled as counsel of record until *twenty-seven (27) days after* they file the Motion for Sanctions and to Enjoin Further Frivolous Filings on behalf of Herman and Roy.

**CONCLUSION**

For the reasons given above, Donovan requests an order be entered addressing the above-referenced two issues requiring clarification.

DATED: April 21, 2021

Respectfully submitted,

**/s/ Brian J. Donovan**  
Brian J. Donovan  
Florida Bar No. 143900  
The Donovan Law Group, PLLC  
3102 Seaway Court, Suite 304  
Tampa, FL 33629  
Tel: (352)328-7469  
BrianJDonovan@verizon.net