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The Ten Sealed Plaintiff Factors: the High Burden Plaintiffs Must Overcome to Proceed Anonymously in Second Circuit Civil Litigations

Under the Federal Rules of Civil Procedure, a “complaint must name all the parties.” Fed. R. Civ. P. 10(a). This rule facilitates public scrutiny of judicial proceedings while ensuring that people know who is using their courts. In highly charged cases, however, a plaintiff may wish to file under a pseudonym to protect his privacy interests. Does a plaintiff’s right to privacy overcome the presumption of access to judicial proceedings? And just how high is the anonymity bar?

The U.S. Court of Appeals for the Second Circuit first addressed this issue in *Sealed Plaintiff v. Sealed Defendant*, 537 F.3d 185 (2d Cir. 2008), and identified a “non-exhaustive” list of considerations a district court should weigh when ruling on a motion to proceed anonymously. A recent decision from the Southern District of New York illuminates just how difficult it may be for a plaintiff to proceed anonymously, considering the presumption that lawsuits are “public events” in which the public has a legitimate interest in the identity of the parties.

[The Case: *Roe v. City of New York*, No. 1:24-cv-7093 \(MKV\), 2024 WL 4404186 \(S.D.N.Y. Oct. 4, 2024\)](#)

In *Roe v. City of New York*, the plaintiff sued an auxiliary New York police officer and the City of New York after the officer allegedly sexually assaulted her after she went to the precinct to file a police report. Without obtaining the court’s permission, the plaintiff unilaterally commenced the action under a pseudonym, arguing that the highly intimate and sensitive nature of the sexual assault allegations contained in her complaint, as well as the risk of retaliation she would face from the NYPD if she proceeded under her real name, warranted the protection of her identity. The question before the court was whether the plaintiff had a substantial privacy interest that outweighed the “customary and constitutionally embedded presumption of openness in judicial proceedings.”

In contemplating this question, the court analyzed each of the 10 *Sealed Plaintiff* factors in turn, ultimately finding that only *one* weighed in favor of the plaintiff proceeding anonymously. That factor focused on whether the litigation involves matters that are “highly sensitive and of an extremely personal nature.” While the court agreed that the plaintiff’s sexual assault allegations undoubtedly met this definition, courts in the Southern District have consistently held that allegations of sexual assault alone do not entitle a plaintiff to file a claim anonymously.

Amongst other considerations, the court balanced under *Sealed Plaintiff* were:

1. Whether the identification poses a risk of retaliatory physical or mental harm to plaintiffs or innocent parties.
2. Whether identification presents other harms.
3. Whether the plaintiff is particularly vulnerable.
4. Whether the suit is challenging the actions of the government or that of private parties.

While the plaintiff (1) alleged that both she and her family would be subject to the risk of retaliatory harm, (2) maintained that public replication of the story with her legal name would cause severe mental anguish and worsen her existing PTSD, (3) was particularly vulnerable as an alleged victim of sexual assault, and (4) brought her claim against the City of New York—a public party, the court found many of the plaintiff’s allegations did not rise above mere speculation and so the balance of interests at stake weighed *against* granting plaintiff’s motion to proceed anonymously.

When *do* “extraordinary” circumstances exist to support anonymous filings? Mental health issues are one such area. For example, the Southern District has allowed a veteran plaintiff to remain anonymous in a suit to seal her mental health information. There, the plaintiff was receiving ongoing mental health treatments and wished to keep her identity and records sealed from the public, as her mental health records not only included an involuntary commitment pursuant to the New York Mental Hygiene Law but also included identifying information about other participants in group mental health counseling. In that case, the court analyzed several of the *Sealed Plaintiff* factors and found that the factors weighed in favor of allowing the plaintiff to proceed anonymously.

Takeaway:

When a client wishes to proceed anonymously in the Second Circuit, litigators should temper expectations. In almost all Second Circuit cases where the plaintiff has asked the court for leave to proceed anonymously, the court has denied the motion. Despite one’s inherent right to privacy, the strong presumption that court records and proceedings are open to the public is difficult to overcome absent unique circumstances.