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When courts unmask pseudonymous litigants in sexual misconduct suits

In California, plaintiffs alleging sexual misconduct must clear high procedural and substantive hurdles to litigate anonymously–and so, too, can defendants, who often share the same privacy stakes.

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"The use of pseudonyms has grown significantly in the past quarter century." 29 Loy. U. Chi. L. J. 141, 142 (1971). Plaintiffs in civil lawsuits seek "anonymity ... where the issues involved are private, stigmatizing, or so socially unpopular that the litigants fear retaliation were their true identities to become known." *Id*. Sexual misconduct cases fit neatly in this box since "allegations concerning sexual conduct... fall into the category of highly sensitive and private matters." *Roe v. Smith* (No 21, 2025) 116 Cal. App. 5th 227, 339 Cal. Rptr. 3d 152, 162). Cf., Department of *Fair Emp. & Hous. Sup. Ct. of Santa v. Clara County.* (DFEH) (Aug. 5, 2022) 82 Cal. App. 5th 110, 112 (highlighting "the common practice in California courts of using pseudonyms to protect privacy.") But whether the issues involve highly sensitive and private matters is "merely the first step" to determine whether pseudonymity should be allowed. *Roe, supra*, 339 Cal. Rptr. 3d at 162. California courts must also "find that the interest of privacy in highly personal and sensitive matters overcomes the public's right of access." *Id.*, at 162-163. In order for a California court to make these findings, both procedural and sub-stantive elements must be satisfied.

The procedural prong

Under Cal. R. Ct., rule 2.550 (c), unless confidentiality is required by law, court records are presumed to be open. Subject to certain exceptions, a court record must not be filed under seal without a court order. *Overstock.com, Inc. v. Goldman Sachs Grp., Inc.*, (Nov. 13, 2014) 231 Cal. App. 4th 471, 480. Accordingly, a party requesting that a record be filed under seal must file a motion or an application for an order to seal the record. *See* Cal. R. Ct., rule 2.551 (b). The motion or application must be accompanied by a memorandum and a declaration containing facts sufficient to justify the sealing. *Id.*

Notwithstanding this rule, at least one California appellate court has very recently ruled that it would "not go so far as to hold evidence to justify proceeding anonymously ... is absolutely required." Instead, *Roe* held that "there may be rare cases where the evidence to be sealed is of such an obviously private or sensitive matter, and the risks in its disclosure so broadly understood, that a trial court can make the necessary findings without additional evidence beyond the matter to be sealed." *Roe* cited *People v. Jackson* (2005) 128 Cal. App. 4th 1009, 1015-1017 as an example of such a "rare case," noting "no testimony taken where argument was over the risks of pretrial publicity, harm to minors, and threat to an ongoing investigation of allowing public access to contents of grand jury transcript, indictment, and search warrant affidavits concerning allegations of child abuse by famous defendant." *Roe, supra*, at 162.

"The names of all parties to a civil action must [ordinarily] be included in the complaint." *DFEH, supra*, 82 Cal. App. 5th at 109, citing CCP §422.40. That is because "much like closing the courtroom or sealing a court record, allowing a party to litigate anonymously impacts the First Amendment public access right." *DFEH, supra*, at 111. As such, absent statutory authority to the contrary, "the right to access court proceedings necessarily includes the right to know the identity of the parties." *DFEH*, at 110-111.[1]

Accordingly, in the absence of statutory authority to the contrary, before court records can be sealed or a party is allowed to proceed anonymously, a trial court must hold a hearing and expressly find that: (1) there exists an overriding interest supporting closure and/or sealing; (2) there is a substantial probability that the interest will be prejudiced absent closure and/or sealing; (3) the proposed closure and/or sealing is narrowly tailored to serve the overriding interest; and (4) there is no less restrictive means of achieving the overriding interest. Cal. R. Ct., rule 2.550(d); *see also Universal City Studios, Inc. v. Superior Ct.* (July 29, 2003) 110 Cal.

App. 4th 1273, 1279. ("Since court records are public records, the burden rests on the party seeking to deny public access to those records to establish compelling reasons why and to what extent these records should be made private.")

Thus, without a statute permitting plaintiffs to sue anonymously, it is "incumbent upon [them] to obtain court authorization." *Santa Ana Police Officers Assn. v. City of Santa Ana*, (Feb. 28, 2025) 109 Cal. App. 5th 296, 307. This means that "procedurally, because a hearing is required, a party anonymously will file the initial complaint or petition *conditionally* under a pseudonym and then move for an order granting permission to proceed that way. If the request is granted, the initial pleading can remain. If pseudonym use is denied, the pleading must be amended [or unsealed] to state the party's true name." *Id.*, at 307, emph. supp. *Accord Roe, supra*, 339. Cal. Rptr. 3d at 166 ("[T]o enable the court to conduct a recusal check, the party seeking to use a pseudonym should [also] provide the parties' real names under seal." Failure to proceed in this fashion can not only result in anonymity being stripped but may also lead to a demurrer to the pseudonymous party's complaint being sustained without leave to amend. Santa Ana Police Officers, supra, 109 Cal. App. 5th at 301, 308.

The substantive prong

The First Amendment interest in public access is critically important

"The right of public access to court proceedings is implicated when a party is allowed to proceed anonymously." *Roe, supra*, at 339; Cal. Rptr. 3d at 157. It is essential to a functioning democracy." *Id.* That is because "public access to courtrooms in civil matters serves to: (i) demonstrate that justice is meted out fairly, thereby promoting public confidence in such governmental proceedings, (ii) provide a means by which citizens scrutinize and check the use and possible abuse of judicial power, and (iii) enhance the truth finding function of the proceeding." *Id.* at 157-158. Thus, "outside of cases where an anonymity is expressly permitted by statute, litigating by pseudonym should occur only in the rarest of circumstances," given "the critical importance of the public's right to access judicial proceedings." *Id.* at 158-159.

California courts have recognized at least two interests as potentially sufficient to allow for redaction of names absent express statutory authority, but only where strong admissible supporting evidence exists

It is well settled that "trial courts faced with a motion to proceed pseudonymously should apply 'the overriding interest test.'" *Id.* at 159. The moving party is required to demonstrate that "an overriding interest ... overcomes the right of public access guaranteed by the First Amendment." *Id.* at 159. In making this determination, "courts may consider both state and federal authorities, depending on the facts presented." *Id.*

Although "allegations concerning sexual conduct" constitute "highly sensitive and private matters," that is just "the first step in the overriding interest test." *Id.* at 162. Courts must still "find that the interest of privacy in highly personal and sensitive matters overcomes the public's right of access." *Id.* at 162-163. Thus, "in most cases, a party seeking to proceed pseudonymously should provide evidence supporting his or her motion to allow the trial court to make '[e]xpress factual findings on the matter.'" *Id.* at 166.

California courts "have recognized at least two interests ... as potentially sufficient to allow for redaction of names." *Id.* at 159. The first is maintaining "the privacy of highly sensitive and potentially embarrassing personal information." *Id.* For example, "records revealing gender identity change and/or medical and psychological records," citing *In re M.T.* (2004) 106 Cal. App. 5th 322, 336-341 for the former, and *Oiye v. Fox* (2012) 211 Cal. App. 4th 1036, 1038 as to the latter. *Id.* However, "a recurring theme in the case law is that a party's possible personal embarrassment, standing alone, does not justify concealing their identity from the public." *Id.* at 160. Neither will "a reasonable fear of one's employer or a future employer learning about the lawsuit through an Internet search," by itself, suffice. *Id.* at 163.[2] Nor are unsupported stipulations enough. *Roe, supra*, 339 Cal. Rptr. 3d at 165, citing Cal. R. Ct., rule 2.551(a). Instead, there must also be "evidence of serious mental or physical harm that would occur to plaintiffs should their identities be revealed." *Id.* at 163.[3] That is because "parties generally lose their reasonable expectations of privacy when they file a civil lawsuit." *Id.* at 164.[4]

The second interest that California courts have recognized "as potentially sufficient to allow for redaction of names" is "protecting against the risk of retaliatory harm." *Id.* at 159. But this interest may not be sufficient where the opposing party already knows "the plaintiff's identity" through a demand letter or some other means. *Id.* at 163, n. 8. That is because where "defendants already knew who plaintiffs are, allowing plaintiffs to proceed pseudonymously would not protect against an alleged danger from defendants learning their identity." *Id.* Nevertheless, when this second interest is advanced to support pseudonymity, the 9th Circuit has held that the trial court should also consider ... "(1) the severity of the threatened harm; (2) the reasonableness of the movant's fears; and (3) the movant's particular vulnerability to such retaliation (e.g., child or inmate plaintiffs). *Id.* at 159-160, citing *Does I through XXIII v. Advanced Textile Corp.*, (9th Cir. 2000) 214 F.3d 1058, 1067, 1068.[5]

Finally, "no matter what the interest identified is,"[6] "the trial court should consider precise prejudice at each stage of the proceedings to the opposing party, and whether the public's interest in the case would be best served by requiring litigants to reveal their identities." *Id.* at 159-160, citing *Advanced Textile, supra*, 214 F.3d at 1068.[7]

The prejudice to a defendant sued by a pseudonymous plaintiff for sexual misconduct can be severe and may provide fertile grounds for unmasking the plaintiff

The prejudice to defendants

The prejudice that a defendant can suffer is real if a plaintiff is allowed to proceed pseudonymously in a civil sexual misconduct case. This prejudice can extend to all stages of the litigation since "plaintiff's anonymity would make it more difficult to obtain witnesses and witness testimony," let alone impede any "leverage" defendants may otherwise have "in settlement negotiations," while at the same time interfering with their ability "to fully and adequately cross-examine the plaintiff." *Doe v. Skyline Automobiles, Inc., supra*, 374 F. Supp. 3d at 407 (denying plaintiff's motion to proceed anonymously in lawsuit alleging rape and sexually abusive comments); *Doe v. Townes*, 2022 WL 2395159 *6 (S.D.N.Y.) (same, where defendant planned "to file counterclaims or a countersuit against Plaintiff for defamation and libel, and allowing Plaintiff [who had alleged sexual assault, blackmail and extortion threats by defendant] to proceed anonymously would hamper Defendant's ability to litigate that action."). The existence of such prejudice may provide defendants with additional potent arguments to unmask the pseudonymous plaintiff in a civil sexual misconduct case.[8]

Defendants in civil sexual misconduct cases frequently have the same privacy interest as plaintiffs in pseudonymity

Defendants in civil cases often have the same interest as plaintiffs to maintain "the privacy of highly sensitive and potentially embarrassing personal information." *Roe, supra*, 339 Cal. Rptr. 3d at 162 ("[S]exual conduct ... falls into the category of highly sensitive and potentially embarrassing personal information." *See also, Doe v. Doe*, 2020 WL 6900002 *3 (E.D.N.Y.) (granting defendant's cross-motion to proceed anonymously in civil sexual assault and battery case "for many, if not more of the same reasons that plaintiff may proceed anonymously."); *Doe v. Townes, supra*, 2020 WL 2395159 *6 (S.D.N.Y.) ("Due to the nature of the allegations, which are graphic and serious, the reputational damage risk to Defendants is high ...."); *Doe v. Skyline, supra*, 375 F. Supp. 3d at 406-407 ("Defendants have a substantial interest in maintaining their good name and reputation, particularly in light of the allegations [of rape and sexually abusive comments] in Plaintiff's Complaint.")

Conclusion

Defendants in civil sexual misconduct cases should not just seek to unmask the plaintiff or oppose any effort the latter may make to proceed anonymously, but in the alternative, should also seek pseudonymous protection for himself or herself to level the playing field. "The ultimate question is one of balance, and courts only allow such an imbalance in unique circumstances." *Doe v. Skyline, supra*, 375 F. Supp. 3d at 407. But just like the plaintiff, for the defendant to succeed, he or she "should provide evidence supporting his or her [cross] motion to allow the trial court to make "[e]xpress factual findings" that: (i) "an overriding interest overcomes the right of public access [and] a substantial probability [exists] that interest will be prejudiced if a pseudonym is not used; and that (ii) use of the pseudonym is narrowly tailored to serve the overriding interest [with] no less restrictive means of achieving the overriding interest." *Roe, supra*, 339 Cal. Rptr. 3d at 166.[9]

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