

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

_____)	
JOHN DOE,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO. 3:16-CV-30184-MAP
v.)	
)	
WILLIAMS COLLEGE,)	
)	
Defendant.)	
_____)	

**MEMORANDUM IN SUPPORT OF DEFENDANT’S
MOTION FOR RECONSIDERATION**

Defendant Williams College (the formal name of which is The President and Trustees of Williams College) submits this memorandum in support of its Motion for Reconsideration of the Court’s November 29, 2016 order allowing the plaintiff “John Doe” to use that pseudonym in this case.

Relevant Facts

Doe filed his original Complaint on November 23, 2016, along with a Motion for Emergency Temporary Restraining Order and supporting Memorandum; a Motion for Preliminary Injunction; and a Motion to Proceed Under Pseudonym and for Protective Order, with a supporting Memorandum. Dkt. Nos. 1-6.

Doe’s claims all arise from conflict in his relationship at Williams with a woman now named in Doe’s revised Complaint as “Susan Smith.” Doe claims that Williams wrongfully expelled him following a disciplinary proceeding in which a Hearing Panel determined that Doe engaged in nonconsensual sexual intercourse with Smith and that Williams is vicariously liable for Smith’s alleged assault, harassment and defamation of Doe because that alleged conduct

occurred after Smith graduated and was working in the College's Alumni Office. With respect to the disciplinary proceedings, Doe asserts that the College and its officials acted with deliberate anti-male bias, failed to follow established procedures, violated his privacy rights, and otherwise engaged in serious wrongdoing.

Although Doe referred to himself by that pseudonym in his original Complaint and other filings, he identified Smith by her real name numerous times throughout. His initial filings also included other personal information about Smith, including her home address and cell phone number. This was no mere oversight. It was a deliberate effort to destroy Smith's reputation, just as Doe's counsel had threatened to do.

On August 21, 2016, while the College was investigating cross-complaints of misconduct by Doe and Smith, Doe's lawyer sent an email to Smith threatening to destroy her reputation and seeking to extort a financial settlement from her. The email, a redacted version of which is attached as Exhibit A, threatens to file a lawsuit against Smith seeking "damages [which] are estimated at \$9 million." The email threatens to deploy a "team" to destroy Smith's reputation, not only through the litigation itself but also by means of a nation-wide "media campaign":

When this case goes to litigation, it will become public knowledge of how you behaved as an employee of the college....drinking with the students, physically assaulting and harassing a student (my client), and how dishonest, narcissistic, and emotionally unstable you are. My team is prepared to launch a widespread media campaign that will have national reach.

Exh. A.

While Doe's counsel, to this point, has not named Smith as a defendant in the case, she nevertheless made good on her threat to harm Smith's reputation by naming her throughout the original Complaint and its numerous exhibits.

After counsel for the College complained to Doe's attorney about the public naming of Smith for no proper purpose, Doe's counsel filed revised versions of the Complaint and its exhibits which refer to Smith by that name. This amounted to nothing more than closing the barn door after the horse had escaped. The original filings already had been seen, quoted, and discussed on at least two blogs, both of which identified Smith by her real name and one of which included her photograph, which the blogger copied (without permission) from an archived version of the College's online employee directory.

All of this was just as Doe's counsel intended, as evidenced by the fact that she herself has participated in the blog conversations about this case. Relevant excerpts from one of the blogs are attached as Exhibit B in redacted form. The blogs continue to use Smith's (and Doe's) name in several places in addition to linking to her name and photograph contained in Williams's archived employee directory.

Argument

It is the exceptional case in which a plaintiff may proceed under a fictitious name. *Doe v. Bell Atl. Bus. Sys. Servs., Inc.*, 162 F.R.D. 418, 420 (D. Mass. 1995) (quoting *Doe v. Univ. of Rhode Island*, No. CIV.A. 93-0560B, 1993 WL 667341, at *2 (D.R.I. Dec. 28, 1993)). "The ultimate test for permitting a plaintiff to proceed anonymously is whether the plaintiff has a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings. *Id.* (quoting *University of Rhode Island*, 1993 WL 667341, at *2). The burden is on the movant to demonstrate the need for confidentiality. *Id.*

Plaintiffs are not permitted to proceed anonymously where the complaint accuses others, by name, of "serious and deliberate wrongdoing," as Doe has done in this case. As one District Court put it, in language fully applicable to this case:

Most important for this court's analysis of plaintiff's request to proceed under a fictitious name is the nature of the specific claims he is making against the defendants. His claims directly accuse the defendants of several forms of serious and deliberate wrongdoing. He attacks the defendants' integrity and reputations. Basic fairness requires that where a plaintiff makes such accusations publicly, he should stand behind those accusations, and the defendants should be able to defend themselves publicly.

Doe v. Indiana Black Expo, Inc., 923 F. Supp. 137, 141-42 (S.D. Ind. 1996) (citing *Doe v. Frank*, 951 F.2d 320, 324 (11th Cir. 1992); *Southern Methodist Univ. Ass'n of Women Law Students v. Wynne & Jaffe*, 599 F.2d 707, 712-713 (5th Cir. 1979); *Doe v. Shakur*, 164 F.R.D. 359, 361 (S.D.N.Y. 1996); *Doe v. Bell Atl. Bus. Sys.*, 162 F.R.D. at 420).

Doe has made just such allegations in this case. His Complaint accuses the College and several individuals, by name, of "serious and deliberate wrongdoing" in connection with the disciplinary proceedings against him. For example, Doe alleges Dean Sarah Bolton was biased and discriminated against him on the basis of gender in handling his honor code proceedings, Compl. ¶¶ 43, 61, violated his privacy rights in connection with those proceedings, *id.* at ¶¶ 46, 57, 58, 66, was indifferent to Doe's allegations of harassment by Smith, *id.* at ¶ 71, and was motivated by "malice" and "anti-male bias" in connection with the disciplinary proceedings at issue, *id.* at ¶¶ 77, 79, 93. Doe also alleges that the investigator produced a biased report, *id.* at ¶ 228o, and that the Hearing Panel failed to consider the evidence or apply the correct policies, *id.* at ¶ 170-74.

Doe's Complaint also makes allegations of "serious and deliberate wrongdoing" against Smith, whom he accuses of assaulting, defaming, and harassing him as well as lying, violating his privacy rights, and emotionally abusing him. Compl. ¶¶ 174c-g, 271-275.

Having made such allegations against the College, individuals working for the College, and Smith, basic fairness requires that Doe stand publicly behind his accusations. *Doe v. Bell*

Atl. Bus. Sys., 162 F.R.D. at 421 (citing *Wynne & Jaffe*, 599 F.2d 707, 713 (5th Cir. 1979) (“Because the defendants were publicly named in the complaint they had been exposed to reputational harm and embarrassment, and that fairness dictated revelation of the plaintiff’s identity as well.”); *see also F.B. v. E. Stroudsburg Univ.*, No. 3:09CV525, 2009 WL 2003363, at *4 (M.D. Pa. July 7, 2009).

The Court’s consideration of “basic fairness” in this context also must take into account his counsel’s threat, which she acted on, to destroy Smith’s reputation. It was utterly disingenuous for Doe to file his motion for leave to proceed pseudonymously, beseeching the Court to take extraordinary measures to protect his reputation, when in the very same moment he was filing a Complaint that attacked Smith by name.

Conclusion

The College respectfully requests that the Court reconsider and vacate its Order allowing Plaintiff to proceed under a pseudonym.

WILLIAMS COLLEGE,

/s/ Elizabeth H. Kelly

Daryl J. Lapp (BBO No. 554980)

daryl.lapp@lockelord.com

Elizabeth H. Kelly (BBO No. 672277)

liz.kelly@lockelord.com

LOCKE LORD LLP

111 Huntington Avenue

Boston, Massachusetts 02199

(617) 230-0100

December 22, 2016

CERTIFICATE OF SERVICE

I certify that on December 22, 2016, I filed this document through the ECF system, thereby causing it to be sent electronically to opposing counsel as identified on the Notice of Electronic Filing (NEF).

/s/ Elizabeth H. Kelly

Elizabeth H. Kelly