IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

JANE DOE 92,	)	
	)	
Plaintiff,	)	Case No. 1122-CC10165
	)	
vs.	)	Division 1
	)	
ARCHDIOCESE OF ST. LOUIS, et al.,	)	
	)	
Defendants.	)	

MOTION TO INTERVENE AS OF RIGHT, OR, IN THE ALTERNATIVE, BY PERMISSION, AND TO STAY ENFORCEMENT OF COURT ORDERS DATED MAY 13, 2013 AND NOVEMBER 15, 2013 AND MEMORANDUM OF LAW IN SUPPORT THEREOF

COMES NOW Reverend John Doe, individually and on behalf of similarly situated individuals subject to the terms of the identified orders, by and through undersigned counsel, and submits the following Motion to Intervene and to Stay Enforcement of Court Orders Dated May 13, 2013 and November 15, 2013 and Memorandum of Law in Support thereof.

INTRODUCTION

Through a series of Orders dated May 13, 2013 and November 15, 2013 (the "Orders"), this Court has required Defendants in this above styled action (collectively the Archdiocese) to produce information directly impacting Reverend John Doe's constitutionally protected privacy, liberty and due process rights without an opportunity for Reverend John Doe, or those similarly situated, to be heard. Among other things, the Orders require the Archdiocese to produce the names of alleged victims and alleged perpetrators of sexual abuse within the Archdiocese for a period of years. The Court orders this without regard to the following: (a) the existence or non-existence of the consent of non-parties; (b) the existence or lack of knowledge of non-parties that their names are to be disclosed; (c) whether or not the information is kept within personnel files

over which non-parties enjoy a right to privacy protected by Missouri law; (d) the intent and expectation of the non-parties that the information provided by them was confidential; and (e) whether there was any indicia of reliability to the complaints.

If the Orders are effected without providing Reverend John Doe and others to be heard on the merits, and to defend their rights, these individuals will be gravely and irreparably harmed without the due process of law to which they are entitled. As such, Reverend John Doe respectfully requests that this Court grant the motion to intervene, stay the enforcement of the Orders, and establish a procedure for notice to permit others an opportunity to intervene and be heard consistent with the requirements of due process, before a deprivation of rights occurs.

FACTUAL BACKGROUND

The Orders compel the Archdiocese to produce information regarding prior "complaints" of sexual abuse including the following data and within the following boundaries: (a) the nature of the complaint; (b) the identity of the complainant; (c) to whom the complaint was made; (d) the name of the alleged abuser; (e) the outcome of the complaint; (f) as to "all clergy employees" from a period of July 1, 1983 through June 30, 2003; and (g) as to "non-clergy employees" for a period of January 1, 1996 through December 21, 2000. The foregoing data is subject to a Protective Order entered November 15, 2013 but, as required by the Court, the effective term of that order "will terminate five (5) years after the date of final disposition of the above-referenced cause in the above-captioned court."

Reverend John Doe recently became aware of these issues through the Archdiocese's investigation to gather information in compliance with the Orders.[1] Information and data

[1] Undersigned counsel is in possession of an affidavit of Reverend John Doe attesting to the facts set forth herein, and verifying Reverend John Doe's identity. A redacted copy of the Affidavit is attached hereto as Exhibit A. Counsel will provide this affidavit to the Court upon

pertaining to Reverend John Doe is responsive to the terms of the Orders. Reverend John Doe is of the type of "employee" identified in the Orders, being the subject of one isolated complaint of abuse made during the identified time period(s). That complaint was retracted by the complainant. Documents and information responsive to the Orders, relating to Reverend John Doe, are contained within Reverend John Doe's personnel file which is maintained by the Archdiocese.[2] Reverend John Doe is employed, with friends and family in the St. Louis metropolitan area, and publication of the information currently compelled by this Court's Orders will irreparably harm JD's good name, reputation and employment.

ARGUMENT

I. Rule 55.12 Permits Intervention For Limited Purposes.

Intervention is "permitted by Rule 52.12(a) as a matter of right or by Rule 52.12(b), which provides for intervention by permission of the court." *Johnson v. State,* 366 S.W.3d 11, 20 (Mo. banc 2012). Intervention "generally should be allowed with considerable liberality." *Id.* (internal quotations omitted).

Proposed intervenors need not have an interest in every aspect of a case in order to intervene. In this regard, Missouri courts have granted motions to intervene for the purpose of

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receiving an order that the affidavit will be accepted under seal and used for in camera purposes only, not to be supplied to other counsel in this litigation, the public or any person or entity contemplated to be within the coverage of the current protective order.

[2] Undersigned counsel is in possession of an affidavit of an employee of the Archdiocese, competent to testify as a custodian of records, attesting to the contents of Reverend John Doe's personnel file set forth here. A redacted copy of the Affidavit is attached hereto as Exhibit B. This affidavit references Reverend John Doe by legal name. Counsel will provide this affidavit to the Court upon receiving an order that the affidavit will be accepted under seal and used for in camera purposes only, not to be supplied to other counsel in this litigation, the public, or any person or entity contemplated to be within the coverage of the current protective order.

addressing limited or specific issues. *See, e.g., State ex rel. Ford Motor Co. v Manners*, 239 S.W.3d 583, 587 n.5 (Mo. banc 2007) (noting that in some circumstances, a person may seek to intervene for the sole purpose of modifying a protective order in order to gain access to documents for other pending litigation); *see also Meyer v. Meyer,* 842 S.W.2d 184, 188 (Mo. App. E.D. 1992) (noting that a court can limit intervention to certain issues, or place other conditions on it).

Reverend John Doe, individually and on behalf of others similarly situated, seeks to intervene on a limited basis only, with that basis being to obtain a stay of the enforcement of the Orders, the establishment of a process for notice to permit others an opportunity to intervene and be heard consistent with the requirements of due process, and further proceedings to modify the Orders or to obtain a sufficient protective order before a deprivation of rights occurs.

II. Reverend John Doe Has An Absolute Right To Intervene Under Rule 52.12(a).

Under Rule 52.12(a), an applicant's right to intervene "is absolute" if he meets all of the following requirements: (1) he has an interest in the subject matter; (2) disposition of the action may impede his ability to protect that interest; and (3) his interest is not adequately represented by the existing parties. *Allred v. Carnahan,* 372 S.W.3d 477, 481 (Mo. App. W.D. 2012)(citations omitted). Here, Reverend John Doe satisfies all of these requirements.

Prior to analyzing each element pursuant to Missouri law, a discussion of *Rosado v. Bridgeport Roman Catholic Diocesan Corp.*, 758 A.2d 916 (Conn. App. 2000)(copy attached as Exhibit C), is instructive as it is directly on point. *Rosado* involved the situation presented here: non-party church employees (clergy) seeking to intervene to assert their personal rights as to compelled disclosure of "confidential material contained in their personnel records" requested by plaintiffs seeking information regarding prior complaints of abuse. *Id.* at 918. In evaluating

whether the movant/intervenors could intervene "as of right" the court looked to Rule 24 of the Federal Rules of Civil Procedure as instructive.[3] *Id.* at 920. Employing the federal analytical framework (employing the same three elements used in Missouri, discussed below) to the scenario virtually identical to that presented here, the court held that intervention was proper "*as of right*." *Id.* at 926 (emphasis in original); *see also Tarazi v. Oshry*, 2011 WL 1326271 at *4-5 (S.D. Ohio Apr. 4, 2011) (intervention "as a matter of right" appropriate to argue against identification of non-parties by name). The present circumstances compel the same result.

A. Reverend John Doe has an interest in preserving legally recognized privacy rights and due process rights that are protectable by way of intervention.

"An interest, for purposes of intervention as of right, means a concern, more than mere curiosity, or academic or sentimental desire." *Allred v. Carnahan,* 372 S.W.3d 477, 484 (Mo. App. W.D. 2012), *citing In re Liquidation of Prof'l Med. Ins. Co.,* 92 S.W.3d 775, 778 (Mo. banc 2003). One "interested" in an action "is one who is interested in its outcome because he or she has a legal right that will be directly affected or a legal liability that will be directly enlarged or diminished." *In re: Liquidation,* 92 S.W.3d at 778-779.

Here, Reverend John Doe has multiple constitutional interests directly tied to this case. Those interests are: (a) Reverend John Doe's federal and state constitutional right of privacy generally and in the contents of his personnel file, which contains the information compelled by the Orders for disclosure; and (b) Reverend John Doe's due process rights by virtue of liberty interests in the disclosure of his name in association with a charge of child or sexual abuse.

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[3] Missouri Courts apply a similar approach. Missouri Rules 52.12(a) and 52.12(b)(2) closely track language appearing in Federal Rule of Civil Procedure 24. Where a Missouri rule and a federal rule are essentially the same, federal precedent is considered strong persuasive authority for interpreting the Missouri rule. *See, e.g., Hemme v. Bharti*, 183 S.W.3d 593, 597 (Mo. banc 2006); *In re Murphy & Co.*, 59 S.W.3d 39, 43 (Mo. App. E.D. 2001); *Y.G. v. Jewish Hosp. of St. Louis*, 795 S.W.2d 488, 495 n.2 (Mo. App. E.D. 1990).

Missouri law expressly recognizes both rights as substantial. *See Barber v. Time, Inc.*, 159 S.W.2d 291, 293-94 (Mo. 1942)(the right of privacy is a constitutional right and is part of the right to liberty and pursuit of happiness; noting that the "basis of the right of privacy is the right to be let alone").

With regard to privacy rights attendant to personnel files, the Missouri Supreme Court holds that the "right to privacy is fundamental" and that "[e]mployees have a fundamental right of privacy in employment records." *Doe v. Phillips*, 194 S.W.3d 833, 844 n.9 (Mo. banc 2006) (en banc), *citing Lawrence v. Texas*, 539 U.S. 558, 562 (2003) and *State ex rel. Crowden v. Dandurand*, 970 S.W.2d 340, 343 (Mo. banc 1998). Great care must be taken to weigh the import of this interest because "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed." *State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611 (Mo. banc 2007).

Reverend John Doe also possesses a substantial justiciable interest by virtue of due process rights to which citizens under these circumstances are entitled. It is well-settled in Missouri that due process rights "**attach and protect a liberty interest where a person's good name, reputation, honor or integrity is at stake** because of governmental action." *Barnes v. City of Lawson*, 820 S.W.2d 598, 601 (Mo. App. W.D. 1991), *citing Board of Regents v. Roth*, 408 U.S. 564, 573 (1972) (emphasis added). Though its obviousness hardly warrants citation to authority, public and even private association of one's name with charges of child abuse and neglect, trigger this liberty interest. *See Jamison v. Dep't. of Social Servs.*, 218 S.W.3d 399, 405-412 (Mo. banc 2007). The rights and interests required by the first element of the intervention analysis are present.

B. Disposition of this action without intervention would impede Reverend John Doe's ability to protect privacy and due process rights and interests.

Final execution and satisfaction of the terms of the Court's Orders without affording Reverend John Doe and similarly situated individuals the opportunity to be heard, will not only "impede" their interests, but will deny their constitutional rights outright. This is because it is here that the constitutional right to privacy and the constitutional right to due process merge. Denial of the latter through non-intervention necessarily denies Reverend John Doe and others the opportunity to protect the former.

The full quote from *Barnes*, partially noted above, explains: "[T]he safeguards of procedural due process, **requiring notice and an opportunity to be heard**, attach and protect a liberty interest where a person's good name, reputation, honor or integrity is at stake because of governmental action." *Barnes*, 820 S.W.2d at 601, *citing Board of Regents*, 408 U.S. at 573. Further, in *Jamison* the Missouri Supreme Court discussed in detail the process due and attaching to an individual's liberty interest in similar circumstances. *Jamison*, 218 S.W.3d at 405-412. This requires not only a minimal degree of due process, but substantial due process including not merely investigation, but a full pre-deprivation hearing requiring an affirmative preponderance of the evidence showing. *Id.* at 410.

Under Missouri and federal constitutional law, a denial of due process is a patent impediment to Reverend John Doe's privacy and liberty interests. Non-intervention would constitute that denial. The second element for intervention as of right is satisfied.

C. Reverend John Doe's privacy and due process rights and interests have not been adequately protected.

"[W]here the first two requisites for intervention as of right are met, the third element requires only the 'minimal showing' that the representation 'may be' inadequate." *Allred,* 372

S.W.3d at 487, *citing Toombs v. Riley*, 591 S.W. 2d 235, 237 (Mo. App. W.D. 1979) (quotations in original). While it is true that the Archdiocese raised arguments that the personal interests and rights of both the accused and the accusers are threatened by the existence of the Orders, those arguments were not successful and the privacy and due process rights of Reverend John Doe and similarly situated individuals remain at risk and have not been fully adjudicated. As the Supreme Court of Wisconsin held in granting a teacher intervention as of right to contest publication of private information, despite the efforts of the defendant-employer's presence in the litigation: "[one] cannot expect the district to defend [ ] with the vehemence of someone who is directly affected by public disclosure of the [information]. The personal nature of the interests at stake in the [information] make the [teacher] the best person to protect those interests." *Armada Broadcasting, Inc. v. Stirn*, 516 N.W.2d 357, 362 (Wis. 1994).

Moreover, the November 15th Order contains a threat of severe sanctions if the Archdiocese does not produce the information – including Reverend John Doe's information – by December 16, 2013. If the Order is effected and not stayed, the Archdiocese has an institutional interest to comply and avoid court-ordered sanctions. That interest diverges sharply from Reverend John Doe's interest that the information not be produced at this time pending further proceedings consistent with Reverend John Doe's due process rights. *See Allred*, 372 S.W.3d at 487 ("[T]he third element is satisfied upon a 'minimal showing' that there is a divergence of interest between the proposed intervenor and the party.") (quotations in original). The *Rosado* court reached the same conclusion, holding that the inadequate protection element was satisfied because of the "possibility of divergence of interests." As the *Rosado* court noted, the Diocese defendant's "primary interest necessarily entails the defense of the liability claims, not necessarily the disclosure of the documents" and because "the Diocese is unlikely to undergo

the penalties of contempt in order to preserve someone else's privilege." *Rosado*, 758 A.2d at 925-926. The final element is satisfied.

III. Alternatively, The Court Should Permit Reverend John Doe To Intervene On A Permissive Basis Under 52.12(b)(2)

"Rule 52.12(b) permits intervention when a proposed intervenor's claim or defense and the main action have a question of law or fact in common." *Johnson,* 366 S.W.3d at 21; Mo. Sup. Ct. R. 52.12(b)(2). While permissive intervention is not usually allowed simply to reassert the same defenses, it "can be appropriate when the intervenors can show 'interest *unique* to themselves." *Johnson,* 366 S.W.3d at 21 (emphasis in original). In addition, permissive intervention is appropriate where the suit in question has an impact on an intervenor's economic interests. *Id.*; *Meyer,* 842 S.W.3d at 188.

There is little question that Reverend John Doe likewise satisfies this lesser standard. Reverend John Doe seeks to intervene to litigate deeply personal rights to privacy, liberty and due process that are inherently linked to the Orders. As noted above, for the purposes of intervention, there is a distinction between an individual seeking to protect specific personal privacy, liberty and due process interests vs. that person's employer litigating those issues as a narrow aspect among larger considerations of civil liability. *See* argument and authority at pp. 7-8, *supra*. Further, Reverend John Doe's economic interests are at stake by virtue of adverse employment considerations. As the Missouri Supreme Court noted in *Jamison*, association with charges of child abuse implicate the liberty interest of employability because an "employer who hire[s] such persons face[s] the possibility of tort liability for negligent hiring should allegations arise." *Jamison*, 218 S.W.3d at 407.

Reverend John Doe's interest is common to issues being litigated within this case, but are uniquely personal. Plaintiff seeks, and this Court has ordered, data and information regarding

past complaints of abuse within parameters that implicate Reverend John Doe's name and, therefore, his reputation and employment interests. The standard applicable to permissive intervention is satisfied.

IV. The Orders Should Be Stayed Pending Reverend John Doe's Motion For Intervention And So That He Can Challenge The Substance Of The Orders.

The Orders, as currently drafted, are unconstitutional and violate the privacy, liberty and due process rights of Reverend John Doe and similarly situated individuals. Though intervention is naturally a threshold ruling prior to further and more detailed proceedings on the merits, Reverend John Doe intends to demonstrate the impropriety of the Orders through, *inter alia*, the following arguments set forth briefly here.

A. The Orders violate Reverend John Doe's privacy rights.

In Missouri, the protections afforded the privacy rights of non-parties are heightened. *See e.g., Wohl v. Sprague*, 711 S.W.2d 583, 585 (Mo. App. E.D. 1986) (courts must weigh multiple considerations, "especially when the privacy of a nonparty is involved"); *State ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 328 (Mo. App. E.D. 1985) (in ruling on discovery requests, court must weigh "the extent of an invasion of privacy, particularly the privacy of a non-party"). In such cases, courts must be careful to narrow or withhold outright the confidential non-party information[4] disclosed to accomplish the legitimate litigation purpose while minimizing the deprivation of the non-party's rights. As drafted, the Orders do not strike this required balance.

First, this litigation involves one claimant with a claim against one former member of the clergy within the Archdiocese. Discovery – requiring the identification by name, to be publicly disclosed – of twenty years of accusers and accused is not tailored to balance litigation need and

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[4] These privacy rights constitutionally attach to Reverend John Doe's personnel file, in which the requested data and information is found.

non-party privacy rights. Multiple cases involving virtually the same information sought by Plaintiff here, in the context of abuse allegations, have refused the discovery sought due to the tenuous relevance when balanced against non-party privacy interests. For example, in *Juarez v. Boy Scouts of America, Inc.*, 97 Cal.Rptr.2d 12, 21-22 (Cal. App. 2000), plaintiff sought years of files containing allegations of abuse from and against non-parties on the theory that the documents and information would establish the defendant's prior knowledge. The court rejected the request in whole because it went to the confidential "private affairs of various individuals unrelated to this litigation" and was therefore unconstitutional. *Id.* at 22. More recently the United States District Court for the Western District of Washington reached a similar result in another case involving abuse allegations and the Boy Scouts of America. *R.D. v. Boy Scouts of America*, 2011 U.S. Dist. LEXIS 96760 (W.D. Wash. Aug. 29, 2011). There, plaintiff also sought years of files containing allegations of abuse regarding non-parties for the stated purpose of establishing knowledge. *Id.* at *16-17. The court rejected the requests, noting that other less intrusive means were available to establish knowledge of abuse. *Id.*

Second, while the names and information are currently subject to a protective order, this is insufficient protection under the circumstances. In Missouri, courts recognize that the privacy interests of non-parties are of such sensitivity that even subjecting that information to a protective order, permitting the information to be viewed by those with adverse interests, is inadequate. Outright prohibition must lie. In *Blue Cross and Blue Shield of Missouri v. Anderson*, 897 S.W.2d 167 (Mo. App. S.D. 1995), the court reached this conclusion with regard to non-party contractual and pricing documents that the trial court had ordered produced, though subject to a protective order. The court, on a writ of prohibition, held that the protective order was insufficient given "the privacy rights of non-parties" and that the "risk of irreparable harm to

relator and the invasion of non-party privacy rights outweighs [plaintiff's] need for the requested documents." *Id.* at 171; *see also State ex rel. Madlock v. O'Malley*, 8 S.W.3d 890, 891-892 (Mo. banc 1999) (holding the production of an entire employment file improper, even if subject to a protective order).

Third, even if the Court deems outright prohibition to strike the balance too far away from a legitimate litigation purpose and too heavily towards the privacy rights of a non-party, other safeguards within that spectrum remain and should be employed. This specifically includes name redaction. Assuming for the sake of argument that there is a genuine litigation purpose underlying twenty (20) years of all complaints regarding all persons, the actual names of the accusers and accused in the other instances are not pertinent or necessary to accomplish those goals. The Orders should, but do not currently, balance that consideration. Redaction of the names of those non-parties involved in the unrelated complaints of abuse will not prejudice the supposed litigation purposes Plaintiff advances.

Name and identifying information redaction to protect privacy interests, including those of non-parties, is a commonly employed tactic in a variety of contexts in Missouri. The Missouri Supreme Court explained the rationale in the context of non-party medical records in *State ex rel. Health Midwest Development Group, Inc. v. Daugherty*, 965 S.W.2d 841, 844 (Mo. banc 1998):

> Patients must, however, be protected against humiliation, embarrassment or disgrace by appropriate protective orders. To this end, identifying characteristics should be redacted, and the trial court should conduct an *in camera* inspection of the documents to ensure that patients are protected from humiliation, embarrassment, or disgrace.

(internal citations omitted); *see also State ex rel. Chance v. Sweeney*, 70 S.W.3d 664, 669-670 (Mo. App. S.D. 2002) (medical progress notes ordered produced but subject to redaction); *State ex rel. Lester E. Cox Med. Ctr. v. Keet*, 678 S.W.2d 813, 815 (Mo. banc 1984) (redaction and in

camera inspection of non-party patient information necessary to ensure privacy); *State ex rel. Friedman v. Provaznik*, 668 S.W.2d 76, 79-81 (Mo. banc 1984) (identity of attorney's clients not relevant so court should review in camera to protect non-party identities). The rationale applies equally in all instances where recognized constitutional rights to privacy and liberty exist.

As such, redaction of non-party identifying information has likewise been employed by a variety of courts around the country in the circumstances presented here, where a plaintiff seeks information regarding other unrelated allegations of abuse. For example, recently in *Doe 6 v. Boy Scouts of America*, 2013 WL 1092146 at *1 (Del. Super. Ct. Jan. 28, 2013), plaintiff sought sexual abuse complaint files over twenty-five years for the stated purpose of establishing "specialized knowledge." The court conducted a detailed survey of similar cases around the country and ultimately ruled that though the plaintiff was entitled to discover the complaint files during that time period, the "privacy interests in the names of third parties contained in the files" required that the production "redact the reporting individuals', perpetrators', and the victims' names." *Id.* at *4. This was also the balance struck by the Washington Supreme Court in *T.S. v. Boy Scouts of America*, 138 P.3d 1053, 1056 (Wash. banc 2006) (affirming trial court order that "all alleged victims' names shall be redacted" and "[a]lleged perpetrators' names shall also be redacted and identifying numbers or codes may be substituted for such names") and in *Doe v. Corp. of the Presiding Bishop*, 2012 WL 2061417 at *3 (D. Idaho June 7, 2012) (ordering disclosure of non-party complaint files but requiring the parties to agree on an protective order to include "that the following names be redacted before the documents are produced: (1) the alleged victim; (2) the alleged perpetrator; and (3) the people who reported the alleged abuse."). Similar

measures can and should be employed here to balance potential relevancy concerns with the privacy and liberty rights of non-parties.[5]

Fourth, and again as regards the Protective Order, the five-year sunset provision renders the protections illusory. Public disclosure of abuse allegations causes irreparable harm. *See Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405*, 189 P.3d 139, 148 (Wash. banc 2008) ("The mere fact of the allegation of sexual misconduct toward a minor may hold the [accused] up to hatred and ridicule in the community . . ."). It is devastating to the professional and personal relationships of the accused and the patent harm to an individual's name and reputation are such that, as noted above, federal and state constitutionally protected liberty interests attach. *See* arguments and authority at p. 5-8, *supra*. The sunset provision does nothing to protect these privacy and liberty interests, but instead merely delays the inevitable and irreparable harm the Court's Order will impose on non-parties.

Further, as discussed below, this public release of information is currently ordered in violation of the accuseds' due process rights as they have been afforded no opportunity to be heard, and no showing has been satisfied with regard to those charges.

B. Even if Reverend John Doe and those similarly situated are permitted to intervene, the Orders as drafted violate the state and federal due process rights of those individuals.

The Orders require public disclosure of abuse allegations against individual non-parties without any due process analysis into the legitimacy of those claims. This is in direct conflict with Missouri and federal constitutional law on this point. As noted above, the law recognizes

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[5] Redaction would still afford sufficient information to further explore, for notice and punitive damages purposes, how the Archdiocese responded to the alleged abuse and what actions were or were not taken with regard to the accused, without use of the accused's or accuser's legal name in the record. This could be accomplished through the use of numbers or codes such as employed in *T.S. v. Boy Scouts of America*.

the substantial liberty and privacy interests to which due process considerations attach. When those liberty and privacy interests involve allegations of child abuse severely detrimental to the name and reputation of the accused, the process due is significant, and certainly more than no process which is current state of things here.

In *Jamison* the Missouri Supreme Court engaged in a detailed analysis of the process due under comparable circumstances. Indeed, the circumstances in *Jamison* were even less severe because, unlike here, it did not involve a full public disclosure of the names of individuals against whom the abuse was charged. *Jamison*, 218 S.W.3d at 406 ("[T]he names contained in the central registry are not released to the general public . . ."). There, despite the existence of a pre-disclosure investigation and finding into the credibility of the abuse allegation, the court held that more process was required to protect the accused's constitutional privacy and liberty interests. *Id.* at 410. The court reasoned that:

> Although protecting children from abuse and neglect is a significant state interest, it can be fulfilled by means other than depriving individuals of substantial liberty interests without a prior opportunity to be heard. . . . The need for expediency cannot overshadow the fact that a critical decision is being made about an individual.

Id. As such, the court required that before an accused abuser's name could appear on even a non-public registry, the accused's due process rights compelled notice, an opportunity to be heard, followed by a required showing of abuse by a preponderance of the evidence. *Id.* at 410-411. The present case falls far short of these constitutional protections with regard to the non-party allegations and complaints.

Finally, the constitutional rationale employed by the *Jamison* court is of particular import here, where a Plaintiff, **proceeding as a Jane Doe to protect in perpetuity her own identity and privacy rights**, has sought and obtained an order from the Court requiring that the names

and identities of **non-party** accusers and accused be denied those same rights. The inequity is stark and inconsistent with the due process analysis.

V. The Alleged Victims Are "Similarly Situated" to the Reverend John Due In That They Likewise Possess Privacy And Liberty Rights The Orders Currently Breach.

The Orders only permit withholding of the accuser's name when, at the time of making the complaint decades ago, there is evidence that the accuser expressly requested that his or her identity remain confidential. All other names are to be provided without redaction, and without notice or an opportunity to be heard in defense of their own obvious and substantial right to privacy regarding a deeply personal and sensitive subject matter. Moreover, due to the five year sunset provision on the Protective Order, public disclosure of their identities without their consent, and the embarrassment, humiliation and disgrace associated with it, is merely delayed rather than protected. As set forth above in the "Boy Scouts" cases, redaction of non-parties' information always includes redaction of the accusers' names for these reasons. *See* argument and authority at pl. 11-14, *supra*; *see also Jack Doe 1 v. Corp. of the Presiding Bishop*, 280 P.3d 377, 391 (Ore. banc 2012) (affirming trial court order requiring redaction of the names of victims and reporting individuals).

The need for privacy is known to Plaintiff herself, who has chosen to proceed as "Jane Doe 92." It is a bizarre balance struck when the Plaintiff who elects to come forward publicly to seek redress in a court of law for alleged abuse can unilaterally shield her identity from public scrutiny, while seeking and obtaining a court order requiring that the legal names of non-party victims be disclosed. The Orders violate the privacy, liberty and due process rights of the non-party accusers as well.

CONCLUSION

For each of the foregoing reasons, Reverend John Doe requests that this Court: (a) grant the present motion; (b) stay execution of the Court's Orders of May 13, 2013 and November 15, 2013; and (c) order that Reverend John Doe intervene as of right in an individual and representative capacity or, in the alternative, intervene permissively, for the purpose of further proceedings regarding the substance and propriety of the referenced Orders.

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Exhibit 21

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served via e-mail and facsimile this 13th day of December, 2013 on:

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EXHIBIT A

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL
STATE OF MISSOURI

JANE DOE 92, Plaintiff, v. ARCHDIOCESE OF ST. LOUIS, a Non-Profit Corporation, ARCHBISHOP ROBERT J. CARLSON of the Archdiocese of St. Louis, and FATHER JOSEPH ROSS, Defendants.	)	CASE NO. 1122-CC10165 Div. 1

AFFIDAVIT OF REVEREND [redacted]

I, Reverend [redacted], being of legal age, do hereby depose and state as follows:

1. I am currently residing in [redacted] Missouri. The statements made herein are based on my personal knowledge, unless otherwise indicated. I am otherwise competent to testify on the matters set forth in this Affidavit, and, if called as a witness, would testify as contained herein. I am over eighteen years of age and am competent to make this Affidavit based on my personal knowledge. I have never been convicted of a felony or crime of moral turpitude.

2. I am a priest of the Archdiocese of St. Louis serving in active ministry.

3. I am pastor of [redacted] Parish in [redacted] Missouri.

Exhibit 21

4. On or about November 27, 2013, I became aware of a request to provide the Archdiocese with certain information including details of complaints of sexual abuse by members of the clergy and other parish employees in order to comply with the Court's November 15, 2013 Order.

5. A complaint of this nature was brought against me and then retracted during this time period.

6. This complaint has never been made public.

7. Both personally and in my position as member of the clergy, the disclosure, even to a limited number of persons within the context of the lawsuit brought by Jane Doe 92, will be traumatic to me causing not only embarrassment, but also professional damage to my reputation and my ability to serve as an effective member of the clergy. This damage will be greatly increased if the protective order which is intended to limit the disclosure to the attorneys, their consultants and to others involved with the case, ends five years after the conclusion of the case. This damage, both personal and professional, will cause irreparable harm to me.

8. I make this Affidavit in support of my Motions To Intervene, To Use A Pseudonym, and related motions addressed to the Orders of the Circuit Court of the City of St. Louis dated May 13, 2013 and November 15, 2013 and the Protective Order dated November 15, 2013.

Exhibit 21

Executed on the 10th day of December, 2013, in the City of St. Louis, Missouri.

FURTHER AFFIANT SAYETH NOT

[redacted]

Subscribed and sworn before me on this 10th day of December, 2013.

Dawn M. Renwick
Notary Public, State of Missouri
My commission expires April 14, 2017

DAWN M. RENWICK
Notary Public - Notary Seal
STATE OF MISSOURI
Jefferson County
My Commission Expires April 14, 2017
Commission # 13536239

Exhibit 21

EXHIBIT B

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
TWENTY-SECOND JUDICIAL
STATE OF MISSOURI

JANE DOE 92,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CASE NO. 1122-CC10165
	)	
ARCHDIOCESE OF ST. LOUIS, a Non-Profit Corporation, ARCHBISHOP ROBERT J. CARLSON of the Archdiocese of St. Louis, and FATHER JOSEPH ROSS,	)	Div. 1
	)	
Defendants.	)	

AFFIDAVIT OF REVEREND MONSIGNOR JEROME D. BILLING

I, Reverend Monsignor Jerome D. Billing, being of legal age, do hereby depose and state as follows:

1. I am currently residing in the City of St. Louis, Missouri. The statements made herein are based on my personal knowledge, unless otherwise indicated. I am competent to testify on the matters set forth in this Affidavit, and, if called as a witness, would testify as contained herein. I am over eighteen years of age and am competent to make this Affidavit based on my personal knowledge. I have never been convicted of a felony or crime of moral turpitude.

2. I am the Chancellor for Canonical Affairs of the Archdiocese of St. Louis and in that capacity I am the custodian of the personnel files of members of the archdiocesan clergy of the Archdiocese of St. Louis.

Exhibit 21

3. Among the personnel files in my custody is the personnel file of Reverend [redacted] who is the pastor of [redacted] Parish in [redacted], Missouri.

4. I have read the Order of Judge Robert Dierker in the case Jane Doe 92 vs. Archdiocese of St. Louis, et al., which is dated May 13, 2013 ("May 2013 Order") and the Order in the same case dated November 15, 2013.

5. I have reviewed the personnel file of [redacted] and it contains information responsive to paragraph 4 of the May 2013 Order.

6. It is normal practice for the information referred to in paragraph 5 above to be kept in the personnel files of archdiocesan clergy maintained by the Archdiocese of St. Louis.

Executed on the 12th day of December, 2013, in the City of St. Louis, Missouri.

FURTHER AFFIANT SAYETH NOT

Rev. Msgr. Jerome D. Billing
Reverend Monsignor Jerome D. Billing

Subscribed and sworn before me on this 12th day of December, 2013.

Jan Haberberger
Notary Public, State of Missouri
My commission expires 12/3/16

JAN HABERBERGER
Notary Public - Notary Seal
State of Missouri
Commissioned for Franklin County
My Commission Expires: December 03, 2016
Commission Number: 12468670

Exhibit 21

EXHIBIT C

Appellate Court of Connecticut.
George L. ROSADO et al.
v.
BRIDGEPORT ROMAN CATHOLIC DIOCESAN CORPORATION et al.

No. 18669.
Argued April 24, 2000.
Decided Oct. 3, 2000.

Seven priests moved to intervene in action brought by former parishioners to recover damages for personal injuries allegedly sustained as a result of defendants' alleged negligent supervision of a particular priest. The Superior Court, Judicial District of Fairfield, Skolnick, J., denied motion. Priests appealed. The Appellate Court, Dupont, J., held that priests were entitled to intervene as of right.

Reversed and remanded with direction.

West Headnotes

[1] Parties 287 41

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k41 k. Grounds. Most Cited Cases

Priests were entitled to intervene as of right, in action to recover damages for alleged sexual abuse by another priest, for unique purpose of contesting disclosure of private, confidential files and issues relating to this interest, given that if denied intervention and denied an appeal, any of their rights to object to disclosure of records would have been terminated, priests had a direct and personal interest in arguing to protect release of their personnel files, and defendants and priests did not face identical harm. C.G.S.A. § 52-107.

[2] Appeal and Error 30 78(2)

30 Appeal and Error
30III Decisions Reviewable
30III(D) Finality of Determination
30k75 Final Judgments or Decrees
30k78 Nature and Scope of Decision
30k78(2) k. Relating to Parties and Process. Most Cited Cases

If a would-be intervenor has a colorable claim to intervene as of right, denial of motion to intervene is appealable and is treated as a final judgment for purposes of an appeal.

[3] Appeal and Error 30 329

30 Appeal and Error
30VI Parties
30k329 k. Intervention or Addition of New Parties. Most Cited Cases

Appeal and Error 30 913

30 Appeal and Error
30XVI Review
30XVI(G) Presumptions
30k913 k. Parties. Most Cited Cases
(Formerly 30k916(3))

In reviewing denial of a motion to intervene, pleadings are accepted as correct, and interest of intervenor does not have to be proved by testimony or evidence.

[4] Parties 287 ⚿44

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k44 k. Application and Proceedings Thereon. Most Cited Cases

Right to intervene is based on allegations of would-be intervenor, without regard to their actual validity.

[5] Parties 287 ⚿38

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k38 k. In General. Most Cited Cases

Rules for intervention should be construed liberally to avoid multiplicity of suits.

[6] Appeal and Error 30 ⚿842(1)

30 Appeal and Error
30XVI Review
30XVI(A) Scope, Standards, and Extent, in General
30k838 Questions Considered
30k842 Review Dependent on Whether Questions Are of Law or of Fact
30k842(1) k. In General. Most Cited Cases

Appeal and Error 30 ⚿949

30 Appeal and Error
30XVI Review
30XVI(H) Discretion of Lower Court
30k949 k. Allowance of Remedy and Matters of Procedure in General. Most Cited Cases

Denial of a motion to intervene as of right raises a question of law and warrants plenary review, whereas a denial for permissive intervention is reviewed with an abuse of discretion standard.

[7] Parties 287 ⚿42

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k42 k. Time for Intervention. Most Cited Cases

Necessity for showing that a would-be intervenor made a timely request for intervention involves a determination of how long intervenor was aware of an interest before he or she tried to intervene, any prejudicial effect of intervention on existing parties, any prejudicial effect of a denial on applicant and consideration of any unusual circumstances either for or against timeliness.

[8] Parties 287 ⚿42

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k42 k. Time for Intervention. Most Cited Cases

Requirement that request to intervene be prompt is applied more leniently if intervention as of right is sought, rather than permissively

[9] Parties 287 ⚿42

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention

287k42 k. Time for Intervention. Most Cited Cases

Trial court's finding that timeliness of motion to intervene exists or does not is a question of fact and is described as a discretionary action.

[10] Parties 287 ⚿42

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k42 k. Time for Intervention. Most Cited Cases

Timeliness prong for proving right to intervene considers any prejudice caused to applicant if court denies intervention.

[11] Parties 287 ⚿44

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k44 k. Application and Proceedings Thereon. Most Cited Cases

Would-be intervenor bears burden of demonstrating inadequate representation by an existing party.

[12] Parties 287 ⚿41

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k41 k. Grounds. Most Cited Cases

Parties 287 ⚿44

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k44 k. Application and Proceedings Thereon. Most Cited Cases

Most significant factor in assessing adequacy of representation of would-be intervenors is how interests of absentees compare with interests of present parties, and weight of would-be intervenors' burden varies accordingly.

[13] Parties 287 ⚿44

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k44 k. Application and Proceedings Thereon. Most Cited Cases

If interests of party and proposed intervenor are identical or there is a party charged by law with representing a proposed intervenor's interest, a presumption of adequate representation arises that would-be intervenor can overcome only through a compelling showing of why this representation is not adequate.

[14] Parties 287 ⚿44

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k44 k. Application and Proceedings Thereon. Most Cited Cases

For purposes of determining whether motion to intervene should be granted, a presumption of inadequacy of representation of proposed intervenor arises when proposed intervenor must rely on his opponent or one whose interests are adverse to his.

[15] Parties 287 ⚿44

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k44 k. Application and Proceedings Thereon. Most Cited Cases

Proposed intervenor's burden for establishing inadequate representation of similar interests is minimal.

[16] Parties 287 ⚿41

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k41 k. Grounds. Most Cited Cases

Particular circumstances of each case will dictate whether proposed intervenor has an interest different from that of an existing party which would warrant grant of motion to intervene, and doubts should be resolved in favor of intervention.

[17] Parties 287 ⚿41

287 Parties
287IV New Parties and Change of Parties
287k37 Intervention
287k41 k. Grounds. Most Cited Cases

Differences in possible harm between parties and proposed intervenor constitute a legitimate factor in assessing whether interests of parties and proposed intervenor are identical, for purposes of determining whether there was adequate representation and whether motion to intervene should be granted.

****918*134** Mark R. Kravitz, with whom were Eileen R. Becker and, on the brief, Suzanne E. Wachsstock, New Haven, for the appellants (proposed intervenors John Doe et al.).

***135** William F. Gallagher, Syracuse, NY, with whom were Cindy L. Robinson, Bridgeport and, on the brief, Barbara L. Cox, New Haven and Frank A. Bailey, Bridgeport, for the appellees (plaintiffs).

Before MIHALAKOS, ZARELLA and DUPONT, Js.

DUPONT, J.

This is an appeal from the denial of the motion of seven priests to intervene in an action brought by the plaintiffs against the Bridgeport Roman Catholic Diocesan Corporation (Diocese) and others for damages for alleged sexual abuse by a particular priest when he was assigned to various churches within the Diocese.[FN1] The seven priests seek to intervene as of right or permissively for the limited purpose of arguing motions to quash, for a protective order and to prevent disclosure of private, confidential material contained in their personnel records.[FN2] The disclosure that the seven priests [FN3] seek to protect relates to information about them contained in records in the possession of the defendants about "all complaints, accusations, allegations, reports and rumors concerning sexual misconduct, sexual abuse, sexual assault, inappropriate touching, inappropriate fondling, sexual overtures or any sexual impropriety or alleged impropriety...." The information was sought by subpoena, interrogatory and production requests directed to the Diocese.

FN1. The motion to intervene was denied by the trial court, *Skolnick, J.* A motion of the plaintiffs to dismiss this appeal for lack of an appealable final judgment was denied by this court on January 13, 1999.

FN2. The personnel records were previously ruled to be personnel files for the purpose of General Statutes § 31-128f by another trial judge, *Levin, J.* Section 31-128f provides in relevant part: "No individually identifiable

> information contained in the personnel file ... of any employee shall be disclosed by an employer ... without the written authorization of such employee except ... (2) pursuant to a lawfully issued administrative summons or judicial order, including a search warrant or subpoena ... or the investigation or defense of personnel-related complaints against the employer...."

> FN3. The proposed intervenors were granted permission to use the fictitious names of Reverend John Doe 1 through 7.

***136** The issue is whether the seven priests should be allowed to intervene to protest the production of the records on the alleged grounds that the records are protected from disclosure by the United States constitution, the constitution of Connecticut, Connecticut statutes and the common law.[FN4] The plaintiffs and the seven priests present compelling arguments for their different answers to this question.

> FN4. Whether the records are in fact subject to disclosure is not the question of this appeal. Our question is whether, based on the allegation that the appellants do have an interest in part or in all of the records that would protect the records from disclosure, they should be allowed to intervene either as of right or permissively. The granting of the motion to intervene is not a determination of whether any material should be produced in part, in toto or not at all. See *Washington Trust Co. v. Smith*, 241 Conn. 734, 746, 699 A.2d 73 (1997); *Hennessey v. Bristol Hospital*, 225 Conn. 700, 704, 626 A.2d 702 (1993); see also *Northern States Power Co. v. Westinghouse Electric Corp.*, 156 F.R.D. 168, 172 (D.Minn.1994).

The court denied the motion of the seven priests because "[i]t is not necessary for the movants to intervene, thereby becoming****919** parties in the underlying action, in order to obtain the relief they seek. As nonparty persons to be deposed, they may be entitled to this relief under ... Practice Book § 13-27 and Practice Book ... § 13-28." Although it denied the motion, the court stated that it would "afford counsel a full hearing on the substantive issues" raised in the motions. A motion to quash was subsequently denied, but a motion to reargue that denial is still pending. The court also obtained the personnel files for review in camera, but has not yet reviewed them or decided what information, if any, should be disclosed to the plaintiffs. The court decided that it would take no action as to these matters while this appeal is pending. In addition, pursuant to a motion for review filed in this court, the plaintiffs are precluded from questioning the former bishop of Bridgeport about the seven priests. In other words, all discovery involving the seven priests has been stayed until this appeal has been decided.

***137** The stated purpose of the discovery requests was to determine whether or when the Diocese knew or should have known that some priests within the Diocese were engaging in improper sexual behavior. The amended complaint contains thirteen counts and seeks damages by twelve plaintiffs who allege that they were sexually harmed by one particular priest when they were minors. The amended complaint alleges negligent supervision of that priest and other priests by a bishop, a monsignor and the Diocese, and alleges harm arising from their failure to supervise the priests in the Diocese in a proper manner when they knew that priests within the Diocese were sexually abusing children.

The plaintiffs' principal argument is that the word "judgment" in Practice Book § 9-18 [FN5] should be read strictly to allow intervention only if a movant for intervention has an interest or title that the final judgment, as between the original litigants, will affect. The seven priests argue that Practice Book § 9-18

should not be read literally and that intervention should be allowed when there is a direct interest of a person at stake, not necessarily an interest in the final judgment to be *138 rendered in the case. The seven priests rely on rule 24 of the Federal Rules of Civil Procedure [FN6] for their argument that **920 they should have been allowed to intervene as of right or, at the very least, permissively.

FN5. Practice Book § 9-18 is modeled after General Statutes § 52-107. Section 9-18 provides: "The judicial authority may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the judicial authority may direct that they be brought in. If a person not a party has an interest or title which the judgment will affect, the judicial authority, on its motion, shall direct that person to be made a party."

General Statutes § 52-107 provides: "The court may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others; but, if a complete determination cannot be had without the presence of other parties, the court may direct that such other parties be brought in. If a person not a party has an interest or title which the judgment will affect, the court, on his application, shall direct him to be made a party."

Practice Book § 99, now § 9-18, used the word "his" and not "its" in the second sentence of the rule as it is now printed. Notably, § 52-107 uses the word "his" in the second sentence of the statute.

FN6. Rule 24 of the Federal Rules of Civil Procedure provides: "(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of the United States confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute of the United States confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The same procedure shall be followed when a statute of the

> United States gives a right to intervene. When the constitutionality of an act of Congress affecting the public interest is drawn in question in any action in which the United States or an officer, agency, or employee thereof is not a party, the court shall notify the Attorney General of the United States as provided in Title 28, U.S.C. § 2403...."

Connecticut procedure has not always clearly defined the distinction between permissive intervention and intervention as of right; *Horton v. Meskill,* 187 Conn. 187, 191-92, 445 A.2d 579 (1982); although rule 24(a) and (b) of the Federal Rules of Civil Procedure has delineated the distinction. Practice Book § 9-18, formerly § 99, applies to intervention as of right, but the nature of that right has not always been fully articulated. "Where state precedent is lacking, it is appropriate to ***139** look to authorities under the comparable federal rule, in this case Rule 24 of the Federal Rules of Civil Procedure." *Horton v. Meskill,* supra, at 192, 445 A.2d 579; see *Washington Trust Co. v. Smith,* 241 Conn. 734, 746, 699 A.2d 73 (1997).

The plaintiffs take the position that Practice Book § 9-18, if its exact wording is followed, would prohibit intervention as of right because it provides that an intervenor must have an "interest or title which the judgment will affect...." Because the eventual judgment in this case can directly affect only the plaintiffs and the defendants, the plaintiffs argue that the seven priests cannot intervene as of right. The seven priests contend that the word "judgment" should be more liberally construed as including those interlocutory decisions that are appealable as final judgments and that rule 24 is analogous to Practice Book § 9-18, with Connecticut cases approving the rule's use when Connecticut cases on point are lacking. We agree with the seven priests and conclude that General Statutes § 52-107, as tempered by rule 24 of the Federal Rules of Civil Procedure, is operative here.[FN2]

FN7. Practice Book § 9-18 "is virtually identical to C.G.S.A. § 52-107, which has been in existence since it was adopted as § 15 of the 1879 Practice Act. The recent tendency of the Supreme Court is to ignore the specific embarrassing language of these sections and follow the most analogous Federal Rule." W. Horton & K. Knox, 1 Connecticut Practice Series: Practice Book Annotated (4th Ed.1998) § 9-18, comments, p. 310.

[1] The precise issue to be resolved is whether intervention as of right to join a case in order to prevent an interlocutory discovery or production of documents that would directly affect a would-be intervenor exists when the final judgment in the case, resolving the dispute as between the primary litigants, would not affect the intervenor. This exact question has not been considered by an appellate court of Connecticut, although it has been considered and decided by at least one superior***140** court, and frequently decided by federal district and federal circuit courts. Closely related questions have also been considered by Connecticut appellate courts.

Washington Trust Co. and other Connecticut appellate cases have often relied on rule 24 of the Federal Rules of Civil Procedure and have spoken approvingly of the rule. See *Milford v. Local 1566,* 200 Conn. 91, 94, 510 A.2d 177 (1986); *Horton v. Meskill,* supra, 187 Conn. at 192, 445 A.2d 579; *State Board of Education v. Waterbury,* 21 Conn.App. 67, 72, 571 A.2d 148 (1990).

****921** Cases involving rule 24(a) establish four requirements that an intervenor must show to obtain intervention as of right. The motion to intervene must be timely, the movant must have a direct and substantial interest in the subject matter of the litigation, the movant's interest must be impaired by disposition of the litigation without the movant's involvement and

the movant's interest must not be represented adequately by any party to the litigation. *Washington Trust Co. v. Smith*, 42 Conn.App. 330, 336-37, 680 A.2d 988 (1996), rev'd on other grounds, 241 Conn. 734, 699 A.2d 73 (1997); see also *Edwards v. Houston*, 78 F.3d 983, 999 (5th Cir.1996) (en banc).

[2] Before beginning our analysis of the four prongs of rule 24(a), we discuss some general principles applicable to intervention as of right. [FN8] If a would-be intervenor has a colorable claim to intervene as of right, the denial of the motion to intervene is appealable and is treated as a final judgment for purposes of an appeal. *Winslow v. Lewis-Shepard, Inc.*, 216 Conn. 533, 536, 582 A.2d 1174 (1990); ***141** *Ricard v. Stanadyne, Inc.*, 181 Conn. 321, 322 n. 1, 435 A.2d 352 (1980); *AIU Ins. Co. v. Brown*, 42 Conn.App. 363, 367, 679 A.2d 983 (1996); *Common Condominium Assns., Inc. v. Common Associates*, 5 Conn.App. 288, 291, 497 A.2d 780 (1985); see also *Horton v. Meskill*, supra, 187 Conn. at 191-96, 445 A.2d 579.

> FN8. Rule 24(a) was amended in 1966 to make it clear that an intervenor does not need to show that he will be bound by the disposition of the action and to liberalize the prerequisites to intervention. *Edwards v. Houston*, supra, 78 F.3d at 1004-1005.

In the present case, this court, prior to argument, determined that the seven priests had a colorable claim to intervene as of right. This court, therefore, denied the plaintiffs' motion to dismiss the appeal from that denial. The fact that a colorable claim exists does not ensure that upon a full scale, plenary review, it will be determined that the motion to intervene as of right should have been granted by the trial court. See *Common Condominium Assns., Inc. v. Common Associates*, supra, 5 Conn.App. at 291, 497 A.2d 780. It does, however, lend support to the argument that Practice Book § 9-18 and General Statutes § 52-107, in providing that a person with an interest that the "judgment" will affect, intended to include an appealable interlocutory judgment in the word "judgment," not only the "end of the line judgment" disposing of the entire case.

If an interlocutory decision so concludes the rights of a party or a person as described in *State v. Curcio*, 191 Conn. 27, 31, 463 A.2d 566 (1983), there has been an appealable judgment. *McClendon v. Soos*, 18 Conn.App. 614, 616, 559 A.2d 1163, cert. denied, 212 Conn. 808, 563 A.2d 1356 (1989). Our Supreme Court held in *King v. Sultar*, 253 Conn. 429, 435-36, 754 A.2d 782 (2000), that the denial of a motion to intervene filed by a person with a colorable claim to intervention as a matter of right is a final judgment for purposes of appeal and that the proposed intervenor is a "party" for purposes of General Statutes § 52-263. In the present case, the seven priests did establish a colorable claim to intervention as of right. If denied intervention and denied an appeal, any of their rights to object to the ***142** disclosure of records about them would have been terminated.

[3][4][5][6] In both federal and Connecticut decisions, in reviewing the denial of a motion to intervene, the pleadings are accepted as correct, and the interest of an intervenor does not have to be proved by testimony or evidence. *Washington Trust Co. v. Smith*, supra, 241 Conn. at 746-47, 699 A.2d 73; see also *United States v. American Telephone & Telegraph Co.*, 642 F.2d 1285, 1291 (D.C.Cir.1980). The right to intervene is based on the allegations of the would-be intervenor, without regard to their actual validity. *Nizzardo v. State Traffic Commission*, 55 Conn.App. 679, 685, 739 A.2d 744 (1999), cert. granted on other grounds, 252 Conn. 943, 747 A.2d 520 (2000). Further, the rules for intervention****922** should be construed liberally to avoid multiplicity of suits. *Washington Trust Co. v. Smith*, supra, at 747, 699 A.2d 73. The denial of a motion to intervene as of right raises a question of law and warrants plenary review, whereas a denial for permissive intervention is reviewed with an abuse of discretion standard. See *Edwards v. Hou-*

ston, supra, 78 F.3d at 1000.

It is instructive to review Connecticut cases about intervention with particular emphasis on the facts. In *State v. Figueroa,* 22 Conn.App. 73, 75, 576 A.2d 553, cert. denied, 215 Conn. 814, 576 A.2d 544 (1990), the trial court granted the Hartford Courant's motion to intervene [FN9] and then granted its motion to vacate the court's order to seal the file. An appeal was taken from that order and from the granting of the motion to intervene. The appeal from the granting of intervention was withdrawn and was not considered because the court concluded that it had no jurisdiction to hear the appeal at all. Thus, the Appellate Court did not review the granting of the motion to intervene.

FN9. It is not clear whether the motion to intervene was sought permissively or as of right.

***143** A successful bidder at a foreclosure sale was allowed to intervene as of right in a foreclosure action approving the committee's sale of the foreclosed property. *New Milford Savings Bank v. Mulville,* 56 Conn.App. 521, 524, 744 A.2d 447 (2000). Various towns and boards of education had no right to intervene in an action to test the constitutionality of statutory provisions relating to the financing of secondary schools. *Horton v. Meskill,* supra, 187 Conn. at 198, 445 A.2d 579. In that case, timeliness was in question, the would-be intervenors had a limited interest in the litigation, the intervention would cause a delay in the proceedings, and numerous parties, town, cities, boards of education and amici were in the case already, representing the same spectrum of interests. *Id.* A lessee of property being foreclosed and a successor in interest to the mortgagee can intervene as of right to protect their right of redemption in proceedings to confirm a foreclosure sale. *Washington Trust Co. v. Smith,* supra, 241 Conn. at 748, 699 A.2d 73. Parents and a parent teachers organization were allowed to intervene in a mandamus action brought by the state board of education and the commissioner of education against the city of Waterbury to eliminate school racial imbalance. *State Board of Education v. Waterbury,* supra, 21 Conn.App. at 76, 571 A.2d 148.

In *Hennessey v. Bristol Hospital,* 225 Conn. 700, 626 A.2d 702 (1993), the commissioner of health services sought to intervene in a case brought by the plaintiff physician against the defendant hospital. The plaintiff brought an action for an injunction to restrain the defendant from complying with a subpoena issued by the commissioner for records involving the plaintiff pursuant to an investigation of the physician. The plaintiff got a temporary injunction without notifying the commissioner, the would-be intervenor. The commissioner claimed that she was a necessary party, had a direct interest in the production that was adverse to the plaintiff and that she would be affected by a judgment ***144** restraining the disclosure. The court held that the motion to intervene should have been granted because the intervenor had an interest that the judgment affected. The court reasoned that although the commissioner had brought a separate action for enforcement of her subpoena, that action was not necessarily sufficient to protect her interest because if she prevailed in that action and could therefore enforce the subpoena, there could be a conflicting injunction issued by another court from which she could not appeal. *Id.,* at 704, 626 A.2d 702. Similarly, in the present case, if the seven priests could not intervene and successfully brought a separate action to enjoin the production of their records, that injunction would conflict with any order of disclosure issued in this case, from which order they could not appeal.

****923** A significant case in which the intervenor had no direct interest in the judgment as between the two parties to the litigation and was allowed to intervene is *Milford v. Local 1566,* supra, 200 Conn. at 98, 510 A.2d 177. The intervenor was the state board of mediation and arbitration, and the case involved the vacation of an arbitration award in an employment dispute, the outcome of which was of no interest to the board. The intervention was granted to allow the board

to defend the validity of its arbitration procedures. The motion of the board in the trial court did not indicate whether it sought intervention as of right or permissively, and our Supreme Court upheld the action as a permissive intervention, pursuant to rule 24(b). It used, however, the same four criteria as federal and state cases use for intervention as of right pursuant to rule 24(a). *Id.*, at 94, 510 A.2d 177. It also used the criteria of prejudice to the existing parties and the necessity or value of the intervention in terms of resolving the controversy.

The court, in its reasoning to establish standing of the board to intervene, used an aggrievement test, that is, whether the board had a specific personal and legal ***145** interest that would be specially and injuriously affected by the decision. *Id.*, at 96, 510 A.2d 177; see also *United States v. American Telephone & Telegraph Co.*, supra, 642 F.2d 1285. Two of the four criteria for the application of rule 24, namely the direct and substantial interest in the subject matter, and the impairment to the movant's interest if he or she is not involved in the case are, in essence, equivalent to the test for aggrievement. Thus, the case openly subscribes to the use of federal rule 24 and sub silentio approves the use of the same criteria in both federal and state cases involving intervention as of right. It also establishes that an intervenor need not have a direct interest in the judgment as between the existing parties to the litigation.

A review of the facts involved in some federal cases interpreting rule 24(a) is also instructive in resolving the issue raised in this appeal. Groups representing white, female and Asian-American police officers, members of a city airport and parks police were allowed to intervene as of right to contest a consent decree negotiated in settlement of racial discrimination claims in a Title VII action brought by African-American and Hispanic-American police officers. *Edwards v. Houston*, supra, 78 F.3d at 1006. A newspaper and a reporter of that newspaper demonstrated a sufficient interest to allow intervention for the purpose of objecting to the sealing of a file on constitutional grounds in a breach of contract claim brought by a city against a real estate developer even though the intervenors asserted no personal right or interest in the outcome of the case. *Hartford v. Chase*, 733 F.Supp. 533 (D.Conn.1990), rev'd on other grounds, 942 F.2d 130 (2d Cir.1991).

Intervention as of right was granted to a corporation that asserted a direct interest in the outcome of an interlocutory discovery order. *United States v. American Telephone & Telegraph Co.*, supra, 642 F.2d at 1295. The court reasoned that the word "action" as used in ***146** rule 24(a) requires a flexible interpretation in order to favor intervention for individual collateral issues when appropriate to protect the limited nature of an intervenor's interest. *Id.*, at 1291. "To bar intervention for collateral discovery issues merely because they do not concern the subject matter of the overall action would in many cases defeat the general purpose of intervention." *Id.*, at 1292.

Even before rule 24(a) was amended,[FN10] intervention was allowed in the discovery phase of a case to protect the divulging of trade secrets. *Formulabs, Inc. v. Hartley Pen Co.*, 275 F.2d 52 (9th Cir.), cert. denied, 363 U.S. 830, 80 S.Ct. 1600, 4 L.Ed.2d 1524 (1960).

FN10. See footnote 8.

****924** A client whose lawyer has been served with a subpoena to produce documents relating to the client should be allowed to intervene as of right in a proceeding. *In re Katz*, 623 F.2d 122, 125 (2d Cir.1980). Vietnam veterans have been allowed to intervene in a class action between the Agent Orange Plaintiffs' Management Committee and multiple chemical companies to challenge discovery orders to unseal documents. *In re Agent Orange Product Liability Litigation*, 821 F.2d 139, 141 (2d Cir.), cert. denied sub nom. *Dow Chemical Co. v. Ryan*, 484 U.S.

953, 108 S.Ct. 344, 98 L.Ed.2d 370 (1987).

We now briefly review federal and Connecticut decisions to determine whether the oft-cited four prongs for intervention are present in this case. If any one of the four prongs is missing, the motion to intervene as of right should be denied. *Edwards v. Houston*, supra, 78 F.3d at 999; *State Board of Education v. Waterbury*, supra, 21 Conn.App. at 72, 571 A.2d 148.

[7][8][9] The necessity for showing that a would-be intervenor made a timely request for intervention involves a determination***147** of how long the intervenor was aware of an interest before he or she tried to intervene, any prejudicial effect of intervention on the existing parties, any prejudicial effect of a denial on the applicant and consideration of any unusual circumstances either for or against timeliness. *Edwards v. Houston*, supra, 78 F.3d at 1000. There are no absolute ways to measure timeliness. *Id.* The requirement that the request to intervene be prompt is applied more leniently if intervention as of right is sought, rather than permissively. *Horton v. Meskill*, supra, 187 Conn. at 194, 445 A.2d 579. A trial court's finding that timeliness exists or does not is a question of fact and is described as a discretionary action. See *Washington Trust Co. v. Smith*, supra, 241 Conn. at 744, 699 A.2d 73.

The plaintiffs argue on appeal that the motion to intervene was untimely, but that the trial court did not deny the motion to intervene because the seven priests were untimely in bringing it. We have no way, therefore, to review whether the court properly exercised its discretion to deny intervention on the basis of untimeliness. Furthermore, the record does not reveal that the plaintiffs argued to the court that the seven priests made an untimely motion. The motion to intervene is dated April 29, 1998. At the time, a motion by the Diocese for summary judgment dated January 21, 1998, had not yet been decided. In the event that summary judgment had been granted, there would be no necessity to intervene to protest any discovery orders.

[10] The timeliness prong also considers any prejudice caused to the seven priests if the court denies intervention. In the present case, if the seven priests had no right to challenge a disclosure order, the order would thus become unassailable. The plaintiffs argue that the seven priests have not identified any greater right or protection that intervention would confer than what the trial court has already permitted. The court allowed the seven priests to file a motion to quash and offered ***148** them a full hearing on their motion. According to the plaintiffs, intervention is unnecessary because "[t]he court allowed them all the relief they sought except for party status." This contention, however, " 'ignores the legal rights associated with formal intervention, namely the briefing of issues, presentation of evidence, and ability to appeal.' " *Edwards v. Houston*, supra, 78 F.3d at 1003. The grace of the court is not a substitute for formal intervention with its concomitant rights.

The second and third tests for intervention as of right have been satisfied here. The seven priests have a direct and personal interest in arguing to protect the release of personnel files relating to them. General Statutes § 31-128f (2) establishes that interest. We rely on the many cases, Connecticut and federal, previously cited, on which to base our conclusion that the ****925** seven priests have a direct and substantial interest in the proceedings relating to discovery and production of records involving them, and that their interest would be impaired without their involvement at this stage of the proceedings. See *United States v. American Telephone & Telegraph Co.*, supra, 642 F.2d at 1295. Whether the documents should in fact be released is not the issue. *Hennessey v. Bristol Hospital*, supra, 225 Conn. at 704, 626 A.2d 702.

Because the test for intervention as of right is conjunctive, the seven priests must satisfy the fourth and final prong, a demonstration that no existing party

adequately represents their interests. The seven priests have met this showing.

[11][12][13][14] The would-be intervenor bears the burden of demonstrating inadequate representation by an existing party. *Edwards v. Houston*, supra, 78 F.3d at 1005. The most significant factor in assessing the adequacy of representation is how the interests of the absentees compare with the interests of the present parties; the weight of the would-be intervenors' burden varies accordingly. If, ***149** for instance, the interests are identical [FN11] or there is a party charged by law with representing a proposed intervenor's interest,[FN12] a presumption of adequate representation arises that the would-be intervenor can overcome only through a compelling showing of why this representation is *not* adequate. *Id.* At the other end of the spectrum, a presumption of inadequacy arises when an absentee must rely on his opponent or one whose interests are adverse to his.

FN11. Courts have denied intervention to shareholders in derivative suits; see *In re General Tire & Rubber Co. Securities Litigation*, 726 F.2d 1075, 1087 (6th Cir.), cert. denied sub nom. *Schreiber v. Gencorp, Inc.*, 469 U.S. 858, 105 S.Ct. 187, 83 L.Ed.2d 120 (1984); to insurance agents in actions between insurer and insured; see *Continental Graphic Services, Inc. v. Continental Casualty Co.*, 681 F.2d 743, 745 (11th Cir.1982); and to remaindermen under a trust and heirs of an estate in an action brought by fiduciaries; see *Peterson v. United States*, 41 F.R.D. 131, 134-35 (D.Minn.1966); all on the basis of identical interests.

FN12. Absent a compelling showing otherwise, a court will assume that the United States adequately represents the public interest in antitrust actions; see *Sam Fox Publishing Co. v. United States*, 366 U.S. 683, 81 S.Ct. 1309, 6 L.Ed.2d 604 (1961); in school desegregation cases; see *United States v. South Bend Community School Corp.*, 692 F.2d 623 (7th Cir.1982); and in other similar causes of action.

The facts of the present case give rise neither to a presumption of adequacy nor inadequacy. The seven priests have not asserted that their interests are directly adverse to those of the defendants, and there is clearly no party charged by law with representing their interests. Moreover, the defendants' interests are similar, but not *identical* to those of the seven priests. The defendants' primary interest necessarily entails the defense of the liability claims, not necessarily the disclosure of the documents. See *LaRouche v. Federal Bureau of Investigation*, 677 F.2d 256, 258 (2d Cir.1982).

[15][16] The burden for establishing inadequate representation of similar interests is minimal. Indeed, the United States Supreme Court has acknowledged that one successfully establishes inadequate representation "if the ***150** applicant shows that representation of his interest 'may be' inadequate...." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10, 92 S.Ct. 630, 30 L.Ed.2d 686 (1972). The particular circumstances of each case will dictate whether the absentee has an interest different from that of an existing party, and doubts should be resolved in favor of intervention. [FN13] *United States v. American Telephone & Telegraph Co.*, supra, 642 F.2d at 1293.

FN13. This flexible, liberal approach to determining whether present parties adequately represent an absentee's interest is wholly consistent with the purpose of the amendment to rule 24(a). During the amendment procedure, the advisory committee on civil rules was urged to abandon any consideration of adequacy of representation and allow the applicant to be the sole judge as to whether his interests were adequately represented. The committee ultimately rejected the elim-

> ination of this factor for fear that it would " 'break in rudely on ideas of fiduciary representation.' " 7C C. Wright, A. Miller & M. Kane, Federal Practice & Procedure, (2d Ed.1986) § 1909, p. 316. Nonetheless, the postamendment cases illustrate that courts are liberal in finding that where one is willing to bear the cost of separate representation, he may not be adequately represented.

[17] ****926** A brief examination of similar cases proves illustrative for resolution of the issue of adequate representation in this case. Inadequate representation was recognized where an intervenor asserted that his fifth amendment interests were threatened, "and that his attorney cannot be expected to protect those interests by being held in contempt, [which] presents a paradigmatic case of entitlement to intervention as of right." *In re Katz*, supra, 623 F.2d at 125. Differences in possible harm constitute a legitimate factor in assessing whether interests are identical for purposes of adequate representation. *United States v. American Telephone & Telegraph Co.*, supra, 642 F.2d at 1293.

In *Armada Broadcasting, Inc. v. Stirn*, 183 Wis.2d 463, 516 N.W.2d 357 (1994), a teacher sought intervention as of right in a mandamus action brought by a broadcaster directing the school district and district ***151** administrator to provide for inspection of a report on sexual harassment and the teacher's grievance against the district. The Supreme Court of Wisconsin allowed the teacher to intervene as of right because "[one] cannot expect the District to defend the mandamus action with the vehemence of someone who is directly affected by public disclosure of the report. The personal nature of the interests at stake in the ... report make [the teacher] the best person to protect those interests." *Id.*, at 476, 516 N.W.2d 357.

Inadequate representation was demonstrated where a party could have argued the intervenor's position, but the intervenor "was in a better position to defend its own procedures." *Milford v. Local 1566*, supra, 200 Conn. at 95, 510 A.2d 177. Likewise, representation was deemed inadequate where the applicants' "direct and limited interest" was "quite distinguishable" from broad, general concerns of the plaintiffs in that case. *State Board of Education v. Waterbury*, supra, 21 Conn.App. at 74, 571 A.2d 148.

In the present case, the interests of the seven priests and the defendants are not in sharp disalignment nor are they identical. The seven priests have persuasively argued that the defendants may not adequately represent their interest in preventing the disclosure of their personnel records, noting that the Diocese is unlikely to "undergo the penalties of contempt in order to preserve someone else's privilege." Like the teacher in *Armada Broadcasting, Inc.*, who was uniquely capable of vehemently defending against disclosure of private files, the seven priests in this case are undoubtedly in the best position to protect their interest in nondisclosure. Moreover, the seven priests' limited and discrete purpose of preventing disclosure is distinguishable from the defendants' general concern in defending the liability claims, and the defendants and the seven priests do not face identical harm. The possibility of divergence of interests need not be great. See ***152***Natural Resources Defense* http://www.westlaw.com/Find/Default.wl?rs=dfa1.0&vr=2.0&DB=350&FindType=Y&ReferencePosition-Type=S&SerialNum=1978119296&ReferencePosition=1346*Council, Inc. v. United States Nuclear Regulatory Commission*, 578 F.2d 1341, 1346 (10th Cir.1978). The seven priests have met a minimal showing of inadequate representation of their interest by an existing party.

We conclude that the seven priests should have been permitted to intervene *as of right* in the case.[FN14]

FN14. The seven priests argued in the alter-

native that the trial court abused its discretion in denying their motion for permissive intervention. Because we conclude that the seven priests are entitled to intervention as of right, we need not address the merits of this issue.

A successful intervenor is typically granted status as a party plaintiff or a **927 party defendant. In the present case, however, the seven priests did not seek such status. In their motion to intervene, they sought to intervene as of right "for the well-defined, limited purpose of filing a motion to quash and for a protective order, and otherwise to prevent disclosure of private, confidential information from their respective personnel file records." It is for this discrete purpose that the seven priests, on remand, are to be granted intervention as of right.

A court has the authority to grant intervention limited to particular issues, and such limited intervention is not intended to allow enjoyment of all the prerogatives of a party litigant.[FN15] See, e.g., *United States v. American Telephone & Telegraph Co.*, supra, 642 F.2d at 1295 (allowing telecommunications company to intervene for limited purpose of appealing District Court's discovery order); *Bradley v. Milliken*, 620 F.2d 1141, 1143 (6th Cir.1980) (permitting intervention for limited purpose of presenting evidence on question of de jure segregation); *Smuck v. Hobson*, 408 F.2d 175, 182 (D.C.Cir.1969) (en banc) (limiting intervention to issues of order that relate to intervenors' interests). Furthermore, the *153 advisory committee note to the 1966 amendment of rule 24(a) contained the following significant statement: " 'An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings.' " C. Wright, A. Miller & M. Kane, Federal Practice & Procedure (2d Ed.1986) § 1922, p. 505. In light of these cases and the committee note, the seven priests on remand are to be granted intervention for the *unique* purpose of contesting the disclosure of private, confidential files and issues relating to this interest.

FN15. A court also has the authority to dismiss intervenors once their interest in the matter has expired. Federal cases illustrate that intervention as of right does *not* grant absolute entitlement to continue as a party until termination of the suit. See, e.g., *Morgan v. McDonough*, 726 F.2d 11 (1st Cir.1984).

The judgment denying the motion to intervene as of right is reversed and the case is remanded with direction to grant intervention as of right for the limited purpose of filing a motion to quash and for a protective order, and otherwise to prevent disclosure of private, confidential information from the intervenors' respective personnel files.

In this opinion the other judges concurred.

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Exhibit 21