

STATE OF NEW HAMPSHIRE

Case No. 216-2010-CV-00359

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT

**JOHN DOE**

**v.**

**DIOCESE OF MANCHESTER**

**and**

**MISSIONARY OBLATES OF MARY IMMACULATE,  
PROVINCE OF THE UNITED STATES**

**PLAINTIFF'S OBJECTION TO DEFENDANT DIOCESE OF MANCHESTER'S  
MOTION TO DISMISS, OR IN THE ALTERNATIVE, MOTION FOR LEAVE TO  
AMEND THE WRIT, AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff, John Doe, by and through undersigned counsel, hereby files this Objection to Defendant Diocese of Manchester's Motion to Dismiss, or in the Alternative, Motion for Leave to Amend the Writ, and Incorporated Memorandum of Law, and states as follows:

**INTRODUCTION**

This case arises from the sexual abuse of Plaintiff as a small child by a Roman Catholic Priest working in the Diocese of Manchester ("Diocese"). Plaintiff brought the lawsuit under the pseudonym "John Doe" because he has significant fear and anxiety about the consequences if his identity as a victim of childhood sexual abuse becomes known to the general public. No prejudice to the Defendants has resulted from his choice to do so, as his identity is known to both Defendants. His identifying information is also part of the public court file in the form of a Rule 2-A Notice, providing information as requested by a clerk of this Court. The Diocese of

Manchester did not object to Plaintiff's Motion to Seal the Rule 2-A Notice, but for some reason now insists on forcing the victim of this nightmarish crime to publicly disclose his identity yet again by forcing an amendment to the caption of the case. Nothing is gained by the Defendants or the public by requiring him to be named in the caption of the case. The Diocese's Motion makes it clear that this is merely a hardball tactic used to intimidate and shame Plaintiff into either complying with a settlement scheme that he has already rejected, or to punish him for deciding that the process did not provide him the healing or accountability he seeks by moving this Court to bar his claims completely.

Plaintiff believes that he fully complied with the appropriate Superior Court Rules when he filed the Rule 2-A Notice and that dismissal of his case is unwarranted. Should this Court find that Plaintiff has not fully complied with Court rules, the correct remedy is to grant Plaintiff leave to amend his Writ, rather than dismiss Plaintiff's claims entirely.

### FACTS

Plaintiff alleges he was sexually abused as a child by an Oblate priest working in the Diocese of Manchester, Father George St. Jean. Writ, ¶ 10. Father St. Jean was first publicly identified by the Attorney General in 2009 as having been the subject of multiple allegations of child sexual abuse, though Plaintiff was unaware of this until another alleged victim filed suit against these same Defendants in May 2010. Writ, ¶ 17. Plaintiff filed his Writ on July 21, 2010,<sup>1</sup> using the pseudonym "John Doe," just as countless other alleged victims of childhood sexual abuse by priests have done across the United States. He did so because he fears additional psychological, emotional, and other harms to himself and to his family if his identity is publicly

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<sup>1</sup> The same day, an independent support group for survivors of clergy sexual abuse, Survivors Network of those Abused by Priests (SNAP), publicly announced the filing of the lawsuit. None of the Plaintiff's attorneys attended the press event.

disclosed. See Affidavit of John Doe, attached as Exhibit “A.” Around this same time, his true identity was provided to the Defendants. See Affidavit of John Kenison, Esq., ¶ 4, attached as Exhibit B.

On or about July 21, 2010, a clerk of this Court instructed Plaintiff’s counsel that he needed to file the Plaintiff’s name and address with the Court in order to comply with Superior Court Rule 2-A. Id., ¶ 3. Plaintiff’s counsel has previously filed Rule 2-A Notices in other cases to inform the Court of changes to identifying information contained in the Writ. Id., ¶ 6. On July 26, 2010, Counsel filed the Rule 2-A Notice, as well as a Motion to Seal the Rule 2-A Notice.<sup>2</sup> The Motion to Seal was not opposed by the Diocese though it was ultimately denied, as was the Motion for Reconsideration. However, this Court never ordered that Plaintiff amend the Writ itself so as to contain his identifying information.<sup>3</sup>

### ARGUMENT

#### **I. NEITHER THE DEFENDANTS NOR THE PUBLIC HAS A LEGITIMATE, RECOGNIZED INTEREST IN PLAINTIFF’S IDENTITY BEYOND WHAT IS ALREADY CONTAINED IN THE COURT FILE**

Generally, the public has a right of access to governmental proceedings and records that shall not be unreasonably restricted. N.H. Const., pt. 1, art. 8. The purpose is to insure that the government is “accountable, accessible, and responsive.” Associated Press v. State, 153 N.H. 120, 125 (2005) (citing Hughes v. Speaker, N.H. House of Representatives, 152 N.H. 276, 295 (2005)). The right of access is not absolute and may be limited when a sufficiently compelling interest for non-disclosure is identified. Id. at 129 (internal cites omitted). A court should

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<sup>2</sup> Around this time Plaintiff’s true identity was provided to both of the Defendants.

<sup>3</sup> The Missionary Oblates of Mary Immaculate do not object to the Plaintiff proceeding as a John Doe, and its counsel has indicated his client “has no desire to cause [the Plaintiff] more pain” by forcing him to further disclose his identity. Counsel for the two parties have agreed to revisit the issue at a later date should it appear this case will proceed to a trial. Plaintiff has repeatedly offered to make the same compromise with the Defendant Diocese.

employ a three-step analysis to determine what information is public. First, the Court must determine if there is a privacy interest at stake; next, the public's interest in disclosure must be identified; and finally, the Court must balance the public interest in disclosure against the government interest in non-disclosure and the privacy interest of the individual. New Hampshire Civil Liberties Union v. City of Manchester, 149 N.H. 437, 440 (2003). Disclosure is appropriate only when the information informs the public about the conduct and activities of their government. Lambert v. Belknap County Convention, 157 N.H. 375, 383 (2008) ("If disclosing the information does not serve this purpose, disclosure will not be warranted even though the public may nonetheless prefer, albeit for other reasons, that the information be released.")

An individual has a privacy interest in his personal information, including his name and address. Lamy v. N.H. Pub. Util. Comm'n, 152 N.H. 106, 109 (2005) (internal cites omitted). Furthermore, other jurisdictions have recognized an individual's right to proceed anonymously in a case arising from sexual abuse. See Doe No. 2 v. Kolko, 242 F.R.D. 193 (E.D.N.Y. 2006); Doe v. Evans, 202 F.R.D. 173 (E.D.Pa. 2001); Doe v. Blue Cross & Blue Shield United of Wisc., 112 F.3d 869, 872 (7th Cir. 1997) ("fictitious names are allowed when necessary to protect the privacy of...rape victims and other particularly vulnerable parties or witnesses.").

Even the Diocese is unable to cite to any controlling New Hampshire precedent that would require the caption of this case to be changed. Plaintiff's case is readily distinguishable from those trial court orders cited by the Diocese. In Jason Doe v. Roman Catholic Bishop of Manchester, et al., No. 02-C-606, the Court based its ruling, in part, upon the fact that the plaintiff in that case did not allege a threat to his safety or result in harm to him. However, in his Motion to Seal the Rule 2-A Notice and in Plaintiff's Affidavit, Plaintiff claimed that he feared

greater psychological harm, retaliation against himself and his family, and other negative consequences if his identity is revealed. Ex. A, ¶¶ 4-6, 8-9. Furthermore, the Court attached some significance to the identity of the Jason Doe plaintiff being “a secret from the public,” unlike in this case where Plaintiff’s identity is already part of the public court file in the form of the Rule 2-A notice.

The general public has no interest in Plaintiff’s most secret and private information that would require Plaintiff to disclose his identity beyond what is already contained in the Court file. There is no indication that the public’s ability to hold their government officials accountable will be compromised by the caption remaining unchanged. None of the parties is a government official or entity, nor is Plaintiff a candidate for public office. Likewise, Plaintiff gains no strategic advantage in litigation by proceeding as a John Doe since the parties are aware of his identity and address, and the administration of justice is not hampered. No public interest is served by forcing Plaintiff to identify himself in the caption of the case.

The Diocese argues that Plaintiff has no privacy interest in his identifying information because Plaintiff’s counsel posted news clippings about the filing of his suit on her blog. However, many of the allegations contained in Plaintiff’s Writ were already a matter of public record as a result of the Attorney General’s investigations into widespread misconduct by Diocese of Manchester leaders who covered up and protected serial child predators at the expense of the safety of young parishioners. To suggest that the case caption should now be amended because of the media attention to the lawsuit’s filing is merely an attempt to distract this Court from the true intentions of the Diocese by filing this Motion: to humiliate and further injure Plaintiff, and to force him to choose between pursuing his lawsuit and the well-being of himself and his family. The Diocese has improperly and repeatedly informed this Court that

Plaintiff rejected its proposal to settle his claims in a rigid, pre-suit settlement structure that presented him with a “take it or leave it” option which would not provide the healing he seeks, and the Diocese now appears to be punishing him for questioning its authority, just as the priest who sexually abused him as a child coerced Plaintiff into complying with his deviant sexual demands. The Diocese’s Motion should be denied because such tactics against victims of crime should not be condoned this Court.

**II. SHOULD THIS COURT DETERMINE THAT THE WRIT DOES NOT COMPLY WITH COURT RULES, IT IS APPROPRIATE TO GRANT PLAINTIFF LEAVE TO AMEND HIS WRIT**

Amendments to pleadings are discretionary and should be liberally permitted when they would not change a cause of action or call for substantially different evidence. Kenneth E. Curran, Inc. v. Auclair Transp., Inc., 128 N.H. 743, 746 (1986) (internal cites omitted); see also Clinical Lab Prod’s Inc. v. Martina, 121 N.H. 989, 991 (1981) (“Accordingly, this court allows liberal amendment of pleadings unless the changes surprise the opposite party, introduce an entirely new cause of action, or call for substantially different evidence.”)

Plaintiff’s counsel maintains that Plaintiff fully complied with the intent of the rule and the instruction of the Court clerk, and therefore Court Rules, by filing a Rule 2-A Notice. In issuing its orders regarding the Plaintiff’s attempts to seal the Rule 2-A Notice, this Court never ordered Plaintiff to amend his Writ nor to change the caption of his case. However, should this Court find that Plaintiff has failed to fully comply with Court rules, the appropriate remedy is to grant Plaintiff leave to amend his Writ to cure such procedural deficiencies.<sup>4</sup> Dismissal of the Writ would result in a serious injustice to Plaintiff, effectively terminating his legal claims against both Defendants on

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<sup>4</sup> The Diocese of Manchester indicated it does not oppose granting Plaintiff leave to amend the Writ. See Motion to Dismiss, p. 4, fn 2.

procedural grounds, rather than upon the merits of his claims. Therefore, it is appropriate for the Court to grant Plaintiff leave to amend his Writ in the event this Court finds that this case cannot proceed as captioned.

### CONCLUSION

Plaintiff has a legitimate and recognized interest in the most private, intimate details of his life, including that he is the victim of a sexual assault as a child. His interest in protecting that information outweighs the public's interest in the information because it does not implicate the activities or decisions made by the government. Such a decision may be detrimental to the general public because it deters other victims from reporting their sexual abuse for fear of negative consequences of being identified as a victim of a heinous crime. This is nothing more than an attempt by the Diocese to punish Plaintiff for challenging its leaders and refusing to comply with its "take it or leave it" settlement scheme. However, in the event that this Court determines that Plaintiff has not fully complied with applicable Court Rules, the appropriate remedy is to grant him leave to cure the stated deficiencies, particularly since the Defendant does not oppose such relief.

WHEREFORE, Plaintiff requests that this Court deny the Diocese of Manchester's Motion to Dismiss in its entirety, or in the alternative, grant Plaintiff leave to amend his Writ within 30 days, and all other such relief as this Court deems necessary.

Respectfully Submitted,

Dated: March \_\_\_\_, 2011

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*Admitted Pro Hac Vice*





STATE OF NEW HAMPSHIRE

Case No. 216-2010-CV-00359

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT

JOHN DOE

v.


DIOCESE OF MANCHESTER

and

MISSIONARY OBLATES OF MARY IMMACULATE,  
PROVINCE OF THE UNITED STATES

AFFIDAVIT OF 

STATE OF NEW HAMPSHIRE    )  
  )    ss  
COUNTY OF Rockingham    )

 deposes and states as follows:

1. I am the plaintiff in this action.
2. I chose to bring this action under the pseudonym John Doe because I fear negative repercussions if my identity becomes public.
3. I was sexually abused by a Roman Catholic priest when I was a young child. I feel shame and guilt about what happened to me. I am afraid that others will judge me or treat me badly if they find out that I was sexually abused by another male, and that I am now suing the divisions of the Roman Catholic Church.

4. Not all of my family and friends know that I was a victim of sexual abuse by a priest. I did not tell anyone about my abuse until 2008 because I was embarrassed, ashamed, and afraid of the potential consequences if people found out.

5. I fear that if people find out I am a victim of sexual abuse by a priest, they will blame my parents and other family members, and that my family will be harmed.

6. I am very afraid that my business associates and employees will learn that I was the victim of sexual abuse by a priest and it will cause harm to my relationships with them. I work primarily with other men, and I am very afraid that they will treat me differently or judge me. I fear that they may refuse to do business with me and that it will affect my livelihood. I fear that I will be ostracized by my peers, who may have negative perceptions about my bringing a lawsuit against a religious institution.

7. I am afraid that those who do not know that I am a survivor of childhood sexual abuse will find out.

8. I am afraid that my family and I may become the victims of retaliation for suing a religious institution if my identity becomes public.

9. I have a history of depression, anxiety, mood swings, and thoughts of suicide. I am very afraid that disclosing my identity will result in those issues becoming worse, and that I will engage in negative or dangerous behavior as a result of the forced disclosure of my identity.

10. The threat of being forced to disclose my identity against my wishes is causing me significant anxiety.

FURTHER AFFLIANT SAYETH NAUGHT.

Dated: October 12, 2010

[REDACTED]

BEFORE ME, personally appeared [REDACTED] who after being first duly sworn, deposes and states that he has executed the foregoing Affidavit, and that it is correct to the best of his knowledge and belief.

THE FOREGOING INSTRUMENT was sworn to and subscribed before me this 12<sup>th</sup> day of October, 2010.

Barbara J. Paquette  
NOTARY PUBLIC,  
STATE OF NEW HAMPSHIRE

My Comm. Expires: 03/28/2015



STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS.  
NORTHERN DISTRICT

SUPERIOR COURT  
DOCKET NO. 10-C-0359

JOHN DOE

v.

DIOCESE OF MANCHESTER

and

MISSIONARY OBLATES OF MARY IMMACULATE,  
PROVINCE OF THE UNITED STATES

Affidavit of John B. Kenison, Jr.

:

1. I, John B. Kenison, Jr. am an attorney licensed to practice in the State of New Hampshire.
2. I have been retained by the Plaintiff in this action to act as local counsel to his attorneys Jessica Arbour and Stewart Mermelstein.
3. Sometime after the filing of the writ I was contacted by the Court clerk's office and was told that we needed to file the identity of the Plaintiff with the Court to be in compliance with Superior Court Rule 2-A.
4. I had previously identified the Plaintiff to the defendants, contemporaneous to the filing of the writ.
5. I explained the client's reluctance to be publicly identified and indicated to the clerk that I would comply with the Court's request by filing a Rule 2-A notice to identify our client to the Court, and had already done so to the defendants, and would file a contemporaneous Motion to Seal the Rule 2-A Notice.
6. In the past I have often updated the Court and opposing parties by filing a Rule 2-A notice

apprising the Court of any changes of address, without the formality of amending the writ.

7. Further affiant sayeth not.

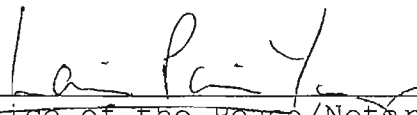
Date: 3-1-11



STATE OF NEW HAMPSHIRE  
COUNTY OF HILLSBOROUGH

March 1, 2011

Then personally appeared, the above-named, John B. Kenison, Jr., Esquire, and made oath that the statements by him subscribed are true to the best of his knowledge and belief.

  
Justice of the Peace/Notary Public  
My Commission Expires:

**LAURI PARIS YOUNG**  
Notary Public - New Hampshire  
My Commission Expires October 17, 2012