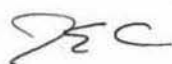


Date: November 27, 2000

To: Patricia E. Ryan, Executive Director

From: John E. Carnes, Commission Counsel 

RE: Use of Pseudonym by Complainant

.....

Question: Can Complainants [redacted] proceed under the pseudonym, "[redacted]", against Respondents M S A D [redacted], [redacted] et al.

Neither the MHRA nor the Civil Rules of Procedure provide for proceeding anonymously before the Commission or in court. The decision is left to the sound discretion of the court, and, presumably, the Commission. Doe v. Hallock, 46 FEP 776 (S.D. Miss. 1987). However, there is a "customary and constitutionally-embedded presumption of openness in judicial proceedings..." Doe v. Stegall, 653 F.2n 180, 186 (5<sup>th</sup> Cir. 1981). Use of pseudonyms is "an unusual procedure, to be allowed only where there is an important privacy interest to be recognized." Doe v. Rostker, 89 F.R.D. 158 (N.D. Cal. 1981).

Courts have set forth factors which allow for the exception to the general rule of openness:

- Are there highly sensitive matters involved?
- Is there real danger of mental or physical harm?
- Would disclosure result in the very injury the complaint was filed to prevent?
- Are children involved?

Rostker at 162; James v. Jacobson, 6 F 3d 233, 238 (4<sup>th</sup> Cir. 1993).

On the other hand, risk of embarrassment or financial harm is not enough. Rostker at 162. In Hallock, the risk of receiving "unsettling telephone calls" was not enough. However, in Doe v. First National Bank of Chicago, 668 F. Supp. 1110, 1111 (N.D. Ill. 1987), the likelihood of "threatening phone calls" was sufficient.

Basis for not allowing the [REDACTED] to proceed anonymously:

- The Complaint is against the public school. The Respondents are aware of the identities of Complainants. There is no allegation that the school or its officials are likely to retaliate against the family.
- The alleged student harasser is aware of the Complainants' identities and he has already been prosecuted.
- Complainants' attorney asserts that anonymity is necessary to prevent retaliation by "other members of the community," but gives no factual basis for this fear.

Basis for allowing the [REDACTED] to proceed anonymously:

- The complaint involves possible retaliation against a child.
- Death threats have been received on Complainants' email, and, therefore, there may be a real danger of mental or physical harm.

I recommend that the Commission allow the family to proceed anonymously. The Respondent should be provided the identity of the Complainants and a letter of explanation along with the "Doe" complaint. The letter must also make clear that Respondents are bound to keep their records relating to this case confidential.

I think there is some chance that going forward with pseudonyms may be challenged by the press, or other interested parties. I thought it would be advisable to have [REDACTED], Esq., supplement her letter request with supporting evidence, e.g., an affidavit from the parents. I called [REDACTED]. She agrees and is willing to get an affidavit from the mother. However, she is going on vacation until December 4<sup>th</sup>. I told her I would discuss the matter with you and that you would decide whether to go forward based on the letter alone, or wait for the affidavit.