

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

**MOTION FOR AN ORDER AUTHORIZING THE DEBTOR TO FILE
PORTIONS OF SCHEDULE F, THE MASTER CREDITOR MAILING
MATRIX, AND OTHER PLEADINGS AND DOCUMENTS UNDER SEAL**

The Diocese of Rochester, the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor” or “Diocese”), hereby moves this Court (this “Motion”) for entry of an order, in substantially the form attached hereto as *Exhibit A*, authorizing the Debtor to file under seal portions of Schedule F and the Master Creditor Mailing Matrix, and to seek approval to file under seal any additional pleadings in this chapter 11 case that may contain Confidential Information (as defined below) on an expedited basis, and granting related relief. In support of this Motion, the Debtor respectfully represents as follows:

BACKGROUND

1. On September 12, 2019 (the “Petition Date”) the Debtor commenced this case by filing a voluntary petition for relief under chapter 11 of the title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is authorized to continue to operate its business and remain in possession of its property as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been requested or appointed in this chapter 11 case, and as of the date of this Motion, no official committee has been appointed or designated.

2. Information regarding the Diocese’s history, business operations, operational structure, facts supporting this Motion and the events leading up to the chapter 11 case can be

found in the *Affidavit of Daniel J. Condon in Support of Chapter 11 Petition and First Day Pleadings* and the *Affidavit of Lisa M. Passero in Support of Chapter 11 Petition and First Day Pleadings*, each of which was filed on the Petition Date and is incorporated herein by reference.

JURISDICTION

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory and rule-based predicates for the relief sought in this Motion are sections 105 and 107 of title 11 of the United States Code (11 U.S.C. 101 *et seq.*, the “Bankruptcy Code”), and Rules 1007, 9018 and 9037 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

THE CONFIDENTIAL INFORMATION

5. Many of the unsecured creditors in this chapter 11 case are individuals whose claims against the Debtor are premised on allegations of sexual abuse (“Abuse Claimants”). Some Abuse Claimants have filed tort claims against the Debtor following the passage of New York’s Child Victims Act (the “CVA Plaintiffs”). Many, but not all, of the CVA Plaintiffs have elected to file their litigation claims against the Diocese pseudonymously, with their real identity to be revealed only to the defendants in the course of litigation and with the understanding that their identities would not be publicly disclosed. Other Abuse Claimants are non-litigants who contacted the Diocese pre-petition, either with or without the assistance of counsel, and asserted claims of abuse by Diocesan employees or agents with the understanding that the Diocese would protect their identities and keep their claims confidential. The Debtor has previously entered into out-of-court settlements with some of those Abuse Claimants where the Debtor agreed to keep

the Abuse Claimant's name confidential, but did not require the Abuse Claimant to keep the settlement confidential.

6. In light of the delicate nature of the claims of the CVA Plaintiffs and other Abuse Claimants, to avoid causing unnecessary additional anguish or embarrassment, and to encourage such individuals to feel safe and secure in advancing their claims without fear of retribution or reprisal, the Debtor submits that it would be inappropriate and potentially harmful to require the public disclosure of: (i) identifying information relating to individuals who have, either informally, formally, or through filing a lawsuit, notified the Debtor of allegations of abuse by clergy members or other persons employed by Catholic entities or otherwise subject to Diocesan supervision, (ii) information relating to the specific allegations of abuse asserted by any of the Abuse Claimants, or (iii) information relating to confidential settlements of abuse claims (collectively, the "Confidential Information").

7. As described below, the Debtor has been operating under confidentiality restrictions for some time, and believes that it is imperative that the decision to come forward and identify oneself as an Abuse Claimant be left to the individuals in question, and that such accommodations can be made without adversely affecting the rights of any other parties in interest.

RELIEF REQUESTED

8. The Debtor seeks permission to protect the identities of CVA Plaintiffs and other Abuse Claimants while providing them notice of this chapter 11 case and notice of such events and motions as is required by the Bankruptcy Code and applicable Bankruptcy Rules. The Debtor further seeks to share names and contact information for CVA Plaintiffs and other Abuse Claimants with the Court and Bankruptcy Clerk under seal. It is proposed that CVA Plaintiffs

and those Abuse Claimants currently represented by counsel be given notices in the Debtor's chapter 11 case only through their respective counsel. The Debtor, through this motion, seeks leave of the Court to serve notice of this chapter 11 case, and other requisite notices, directly on Abuse Claimants who have advised the Debtor of potential claims but have not yet identified counsel, without disclosing those Abuse Claimants' names or addresses to other parties. The Debtor believes that it has contact information for some, but not all, of these Abuse Claimants.

9. The Debtor requests in this Motion that the Court enter an order:

- i. Authorizing the Debtor to file under seal portions of Schedule F and an unredacted copy of the Master Creditor Mailing Matrix, and to seek approval to file under seal any other pleadings, reports or other documents that might be filed from time to time in this chapter 11 case, that, if made publicly available, would disclose any of the Confidential Information, on an expedited basis;
- ii. Authorizing the Debtor to publicly file redacted copies of the Master Creditor Mailing Matrix and Schedule F so as to eliminate Confidential Information from those documents;
- iii. Authorizing the Debtor to identify, schedule and notify CVA Plaintiffs and other Abuse Claimants who are represented by counsel by and through their counsel on Schedule F and the Master Creditor Mailing Matrix;
- iv. Authorizing the Debtor to provide copies of the sealed portions of any such pleadings, reports or documents to the Office of the United States Trustee, as necessary, and authorizing the United States Trustee to use such documents in the discharge of its duties and obligations, including but not limited to solicitation and appointment of any committee under 11 U.S.C. § 1102 but as protected by 11 U.S.C. § 107(c)(3);
- v. Authorizing the Debtor to provide sealed reports, documents and pleadings to counsel for any committee appointed under 11 U.S.C. § 1102 who has been retained pursuant to Court approval, but only after confidentiality procedures are agreed upon between the Diocese and counsel for any such committee;
- vi. Authorizing the Debtor to file a full and complete unredacted copy of the mailing matrix above (the "Confidential Mailing List") with the Court to be held under seal pending further order of the Court;

- vii. Providing that notwithstanding any applicable rule to the contrary, the relief granted under the order shall be immediately effective and enforceable upon entry; and
- viii. Providing that any order granting the relief requested in this Motion is without prejudice to any future determined confidentiality protocol regarding filing proofs of claim and objections to proofs of claim.

BASIS FOR RELIEF

10. The relief sought herein is designed to protect the confidential nature of sensitive information relating to Abuse Claimants and confidential settlement terms and to allow the Debtor to file necessary pleadings with respect to commencement of this chapter 11 case and comply with applicable requirements of disclosure required by the Bankruptcy Code and the Bankruptcy Rules.

11. The Debtor respectfully submits that it should be authorized to file documents that contain Confidential Information under seal. The Debtor acknowledges that the general policy regarding access to information in bankruptcy proceedings favors openness. *See In re Farmland Indus., Inc.*, 290 B.R. 364, 367 (Bankr. W.D. Mo. 2003). However, that policy is subject to certain express statutory limitations set forth in section 107 of the Bankruptcy Code which provides, in relevant part:

(b) On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may –

...

(2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

(c) (1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of . . . unlawful injury to the individual or the individual's property:

(A) any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

...

11 U.S.C. § 107.

12. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under Section 107(b):

On motion or on its own initiative, with or without notice, the court may make any order which justice requires ... to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code[.]

Fed. Bankr. P. 9018. Similarly, Bankruptcy Rule 9037 provides for filings to be redacted or filed under seal where they contain the name or other identifying information of individuals, other than the debtor, known to be and identified as a minor, and provides for protective orders directing redaction or limitations on access to other information for cause. *See* Fed R. Bankr. P. 9037(a), (c) and (d).

13. The Ninth Circuit has observed that the language of section 107(b)(2) is mandatory and requires the bankruptcy court, upon request by the affected person or party, to issue a protective order with respect to matters that are scandalous or defamatory. *Father M. v. Various Tort Claimants (In re Roman Catholic Archbishop of Portland in Oregon)*, 661 F.3d 417, 430-431 (9th Cir. 2011). The Ninth Circuit further held in *Father M.* that “scandalous” must be given its plain meaning for purposes of section 107(b)(2), and that a matter is “scandalous” if it is “disgraceful, offensive, shameful and the like.” *Id.* at 432. The court went on to hold explain that “[u]nder the common usage of the word, allegations that a priest has sexually abused children are most assuredly ‘scandalous’...” Although *Father M.* addressed the issue from the perspective of clergy members seeking to protect themselves from being

misabeled as perpetrators, the Debtor respectfully submits that, unless an Abuse Claimant wishes to come forward and tell their story to the world, the public suggestion that an individual is a victim of such abuse is sufficiently intrusive into that person's personal privacy as to make the matter "scandalous" within the meaning of section 107(b)(2).

14. The Debtor acknowledges that some courts have found mere reputational damage or the perceptions of third parties to be insufficient to merit a protective order under section 107(b)(2). *See, e.g., Neal v. Kansas City Star (In re Neal)*, 461 F.3d 1048, 1054 (8th Cir. 2006) (holding that former judge's listing of attorneys as creditors should be made publicly available where "[p]otential scandal only surfaces when one looks 'outside the lines' of the bankruptcy proceeding . . . and speculates as to motives of the creditor and the debtor."). However, in contrast to cases such as *Neal* where the mere disclosure of an individual's identity, without more, did not imply anything other than a standard debtor-creditor relationship, in the present case there is simply no way to identify the Abuse Claimants without at the same time disclosing to the world that such individuals were allegedly the victims of abuse, information which is by its very nature incredibly personal and painful and which, regrettably, still carries a stigma for many victims. Accordingly, the Debtor submits that the Confidential Information should be protected from disclosure not only under section 107(b)(2) of the Bankruptcy Code, but also pursuant to section 107(c) in order to avoid the potential for any further injury to Abuse Claimants by way of harassment, retaliation, or otherwise. *C.f., Traversa v. Educ. Credit Mgmt. Corp. (In re Traversa)*, 2008 Bankr. LEXIS 1280 (Bankr. D. Ct. April 16, 2008) (finding protective order appropriate to avoid potential unlawful employment discrimination if specifics of alleged disabilities at issue in adversary proceeding became available to potential employers). As noted above, and consistent with section 107(c)(3) of the Bankruptcy Code, the Debtor

proposes to provide the office of the United States Trustee with access to all documents filed in this chapter 11 case, subject to the United States Trustee's obligation not to disclose any information specifically protected by court order.

15. Filing the Confidential Information under seal is additionally supported by Bankruptcy Rule 1007(j), which provides:

(j) Impounding of Lists. On motion of a party in interest and for cause shown the court may direct the impounding of lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of lists, however, by any party in interest on terms prescribed by the court.

Fed. R. Bankr. P. 1007(j). The Debtor respectfully submits that sufficient cause exists here to justify the relief requested in this Motion pursuant to Rule 1007(j).

16. State courts have already considered this issue and decided in many cases to permit CVA Plaintiffs to proceed anonymously, with plaintiffs only disclosing their actual identities to the defendants. For example, the CVA Plaintiffs represented by Stephen Boyd, Esq. and Jeff Anderson & Associates PA obtained a court order allowing them to file claims using the pseudonym "AB-" and a number.¹ In support of their application for this protection, CVA Plaintiffs' counsel identified an expert who opined that victims of sexual abuse should have their identities kept private in order to both avoid any stigma associated with victimhood and because many victims opt not to seek compensation if there is a risk they will be publicly identified.² Because the Debtor has already been ordered by state courts to maintain the confidentiality of CVA Plaintiff identifying information in several cases, it has a legal duty to protect the identities of these CVA Plaintiffs. Moreover, the Debtor strongly believes that it has a moral and ethical

¹ A true and correct copy of the order in *AB-1 Doe v. John Doe(s) 1-5*, Monroe County Index No. E2019007488, dated August 13, 2019, is attached hereto as **Exhibit B**.

² A true and correct copy of the Affidavit of David G. Heffler, Ph.D., filed in connection with *AB-1 Doe v. John Doe(s) 1-5*, Monroe County Index No. E2019007488 is attached hereto as **Exhibit C**.

duty to protect the identities of all Abuse Claimants unless they choose to identify themselves. Such individuals should not be required to make their identities public in order to participate in this chapter 11 case. Subject to the limitations imposed by sections 107(b) and (c) of the Bankruptcy Code, the Diocese has no intention to oppose any steps by individual Abuse Claimants who wish to make their identities public or to disclose Confidential Information regarding their claims; however, the Diocese believes that such a decision should be of the Abuse Claimants' own accord.

17. The Debtor proposes that only CVA Plaintiffs who have already filed suit will be identified on public matrices and schedules, and they will be identified only by their counsel and in the manner that they listed in their respective summons and complaints (i.e., those CVA Plaintiffs who filed suit in their true name will be identified as such, those who filed suit under a pseudonym will be identified only by that pseudonym. On all schedules and matrices filed under seal, CVA Plaintiffs and other Abuse Claimants will be identified by their true name to the extent it is known to the Debtor.

18. In addition to the filing of the Master Creditor Mailing Matrix under seal, the Debtor will file a redacted version of the Master Creditor Mailing Matrix on the docket for use by other parties seeking to provide notice in this chapter 11 case. The Debtor also intends to seek approval of the retention of a claims noticing agent to help fulfill these confidential noticing procedures, to keep claimants informed of developments in the chapter 11 case, and to assist in the claims and solicitation processes with respect to all Abuse Claimants and other creditors in this chapter 11 case.

19. Relief similar to that requested in this Motion has been requested and granted in a number of other diocesan cases on similar facts. *See In re Archbishop of Agaña*, Case No. 19-

00010 (Bankr. D. Guam., January 18, 2019) [Docket No. 45]; *In re Roman Catholic Church of the Archdiocese of Santa Fe*, Case No. 18-13027 (Bankr. D. N.M., Dec. 4, 2018) [Docket No. 31]; *In re The Diocese of New Ulm*, Case No. 17-30601 (Bankr. D. Minn. March 7, 2017) [Docket No. 29]; *In re Diocese of Duluth*, Case No. 15-50792 (Bankr. D. Minn, Dec. 17, 2015) [Docket No. 24]; *In re The Archdiocese of Saint Paul and Minneapolis*, Case No. 15-30125 (Bankr. D. Minn., Jan. 1, 2015) [Docket No. 53]; *In re Roman Catholic Church of the Diocese of Gallup*, Case No. 13-13676 (Bankr. D. N.M., Nov. 25, 2013) [Docket No. 63]; *In re The Catholic Bishop of Spokane*, Case No. 04-08822 (Bankr. E.D. Wash., Dec. 6, 2004) [Docket No. 18]; *In re The Roman Catholic Church of the Diocese of Tucson*, Case No. 04-04721 (Bankr. D. Az., Sept. 27, 2004) [Docket No. 35].

DEBTOR'S RESERVATION OF RIGHTS

20. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, nor does the Debtor waive its rights under the Code of Canon law, or any applicable State or Federal law.

NOTICE

21. Notice of this Motion will be given to (i) the Office of the United States Trustee for the Western District of New York, (ii) the entities listed on the List of Creditors Holding the 20 Largest Unsecured Claims, and (iii) all required governmental agencies. Due to the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtor respectfully submits that further notice of this Motion is neither required nor necessary.

WHEREFORE, for the reasons set forth above, the Debtor respectfully requests that this Court enter an order, in substantially the form attached hereto as ***Exhibit A***, authorizing the Debtor to file under seal portions of Schedule F and the Master Creditor Mailing Matrix, and requesting consideration on shortened notice for the filing under seal of any additional pleadings in this chapter 11 case that may contain Confidential Information, and granting such other and further relief as the Court deems just and proper.

Dated: September 12, 2019

BOND, SCHOENECK & KING, PLLC

By: /s/ Stephen A. Donato

Stephen A. Donato

Charles J. Sullivan

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Telephone: (315) 218-8000

sdonato@bsk.com

csullivan@bsk.com

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Rochester, New York 14625-2825

Telephone: (585) 362-4700

ipalermo@bsk.com

*Proposed Attorneys for the Diocese of
Rochester*

Exhibit A

Proposed Order

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK

In re:

The Diocese of Rochester,

Debtor.

Case No. 19-20905

Chapter 11

**ORDER AUTHORIZING THE DEBTOR TO FILE
PORTIONS OF SCHEDULE F, THE MASTER CREDITOR MAILING
MATRIX, AND OTHER PLEADINGS AND DOCUMENTS UNDER SEAL**

Upon the motion (the “Motion”)¹ of the Diocese of Rochester (the “Debtor”), for entry of an order authorizing the Debtor to file under seal portions of Schedule F, an unredacted version of the Master Creditor Mailing Matrix, and to seek approval to file under seal any additional pleadings in this chapter 11 case that may contain Confidential Information (as defined below) on an expedited basis; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of this chapter 11 case and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that, except as otherwise ordered herein, no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. The Debtor is authorized to file under seal those portions of Schedule F and an unredacted version of the Master Creditor Mailing Matrix (the “Confidential Mailing List”) that disclose or contain any (i) identifying information relating to individuals who have, either informally, formally, or through filing a lawsuit, notified the Debtor of allegations of abuse by clergy members or other persons employed by Catholic entities or otherwise subject to Diocesan supervision, (ii) information relating to the specific allegations of abuse asserted by any of the Abuse Claimants, or (iii) information relating to confidential settlements of abuse claims (collectively, the “Confidential Information”). The Debtor may also seek approval to file under seal any additional pleadings in this chapter 11 case that may contain Confidential Information on an expedited basis.

3. The Debtor is authorized to publicly file redacted copies of the Master Creditor Mailing Matrix and Schedule F so as to eliminate Confidential Information from those documents.

4. The Debtor is authorized to identify, schedule and notify CVA Plaintiffs and other Abuse Claimants, who have also identified counsel representing them, by and through their counsel on Schedule F and the Master Creditor Mailing Matrix.

5. The Debtor is authorized to provide copies of the sealed portions of any such pleadings, reports or documents to the Office of the United States Trustee, as necessary, and the United States Trustee is authorized to use such documents in the discharge of its duties and obligations, including but not limited to solicitation and appointment of any committee under 11 U.S.C. § 1102 but as protected by 11 U.S.C. § 107(c)(3).

6. The Debtor is authorized to provide copies of any sealed reports, documents and pleadings to counsel for any committee appointed under 11 U.S.C. § 1102 who

has been retained pursuant to Court approval, but only after confidentiality procedures are agreed upon between the Debtor and counsel for any such committee.

7. The Debtor is authorized to file a full and complete unredacted copy of the Confidential Mailing List with the Court to be held under seal pending further order of the Court. The Confidential Mailing List may also be provided to any noticing agent retained by the Debtor in this chapter 11 case.

8. Any pleadings which are required to be sent to the parties on the Confidential Mailing List will be sent by the party filing the pleading, *provided however*, that if such party does not have access to the sealed portion of the Confidential Mailing List, the party may contact counsel for the Debtor and/or any noticing agent retained by the Debtor to coordinate service, and such party filing the pleading shall be responsible for any fees and costs associated with such service.

9. The clerk of court shall not provide any notices to those creditors on Schedule F filed under seal. The Debtor's counsel, or a claims noticing agent retained by the Debtor shall provide such notices, under Bankruptcy Rule 2002(f) and otherwise, and file a certificate of service certifying that those individuals whose identifying information has been provided under seal have been served.

10. The Debtor's authorization to file the documents referenced in paragraph 2 of this Order under seal shall be carried out in accordance with the directions of the clerk of court.

11. This Order is without prejudice to any future determined confidentiality protocol regarding filing of proofs of claim and objections to proofs of claim.

12. Nothing contained herein or in the Motion is intended or should be construed as an admission or determination as to the validity of any claim against the Debtor, a waiver of the Debtor's rights to dispute any claim, or an approval or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code, nor does the Debtor waive its rights under the Code of Canon law, or any applicable State or Federal law.

13. The requirements set forth in Local Rule 9013-1(A) and (B) are satisfied.

14. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise. Any subsequent modification or vacatur of this Order shall not invalidate any action taken pursuant to this Order prior to the modification or vacatur of the Order.

15. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: September __, 2019
Rochester, New York

Hon. Paul R. Warren
United States Bankruptcy Judge

Exhibit B

August 13, 2019 State Court Order

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Receipt # 2173270

Book Page CIVIL

No. Pages: 4

Instrument: MISCELLANEOUS DOCUMENT

Control #: 201908140001

Index #: E2019007488

Date: 08/14/2019

Time: 5:46:54 AM

Return To:
Lisa Preston
Unified Court Employee
Hall of Justice
Rochester, NY 14614

Doe, AB-1

Doe, John

Total Fees Paid:

\$0.00

Employee: JM

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK



At a Special Term of the Supreme Court of the State of New York held in and for the County of Erie at the Erie County Courthouse, 50 Delaware Avenue, Part 33, Buffalo, NY 14202, on the 13th day of August, 2019.

PRESENT: Hon. Deborah A. Chimes, J. S.C.
Supreme Court Justice

AB-1 Doe

ORDER

Petitioner,

Index No.: E2019007488

vs.

John Doe(s) 1 - 5

Respondent.

Petitioner AB-1 Doe having moved ex parte for an Order granting Petitioner the right to file a claim in the Seventh Judicial District under the Child Victims Act using the pseudonym AB-1 Doe, directing the parties handling such claim not to disclose Petitioner's identity to the general public, and granting all other Plaintiffs filing claims under the Child Victims Act the same relief with respect to proceeding under a pseudonym, and

Petitioner AB-1 Doe, by Petitioner's attorney, Stephen Boyd, Esq., of counsel to Steve Boyd, PC, having moved for an Order granting Petitioner the right to file a claim in the Seventh Judicial District under the Child Victims Act using the pseudonym AB-1 Doe, directing the parties handling such claim not to disclose Petitioner's identity to the general public, and granting all other Plaintiffs filing claims under the Child Victims Act the same relief with respect to proceeding under a pseudonym, and

UPON reading the Notice of Ex Parte Petition and the Petition of Stephen Boyd, Esq., sworn to the 8th day of August, 2019, in support of Petitioner's request, and

UPON reading the affidavit of psychotherapist David G. Heffler, PhD, LMHC, sworn to the 8th day of August, 2019, in support of Petitioner's request, and

UPON hearing oral argument by Steve Boyd, PC, Stephen Boyd, Esq., of counsel, in support of Petitioner's request, and

UPON due deliberation thereon, it is hereby,

ORDERED:

That Petitioner is permitted to use of the pseudonym "AB-1 Doe" and the caption "AB-1 Doe vs. John Doe(s) 1-5," in a claim to be brought under the Child Victims Act; and it is further

ORDERED:

That Petitioner is permitted to file an action under the Child Victims Act using the pseudonym "AB-1 Doe"; and it is further

ORDERED:

That the parties to such claim brought under the Child Victims Act are to refrain from disclosing Petitioner's true identity to the general public and direct all individuals or entities to whom disclosure is necessary during the course of the litigation that they are barred under this Order from disclosing Petitioner's true identity to the general public; and it is further

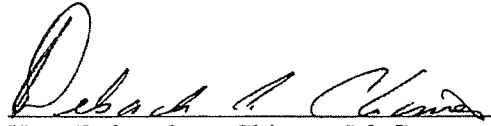
ORDERED:

That all papers filed in the Child Victims Act action, and all judgments, orders, decisions, notices to the Court and any other documents relating to the action refer to the Petitioner as "AB-1 Doe"; and it is further

ORDERED:

That all other Anderson/Boyd Plaintiffs filing claims under the Child Victims Act in the Seventh Judicial District are granted the same relief granted to Petitioner as set forth above, with each Plaintiff's pseudonym to consist of "AB-" and a numeric designation.

ENTERED:

 8/13/19
Hon. Deborah A. Chimes, J.S.C.

GRANTED:

Exhibit C

Affidavit of David G. Heffler, Ph.D.

MONROE COUNTY CLERK'S OFFICE

THIS IS NOT A BILL. THIS IS YOUR RECEIPT.

Return To:
STEPHEN BOYD
40 N. Forest Rd
Williamsville, NY 14221

Receipt # 2172397

Book Page CIVIL

No. Pages: 14

Instrument: AFFIDAVIT

Control #: 201908131245

Index #: E2019007488

Date: 08/13/2019

Time: 11:48:35 AM

Doe, AB-1

Doe, John

Total Fees Paid:

\$0.00

Employee:

State of New York

MONROE COUNTY CLERK'S OFFICE
WARNING – THIS SHEET CONSTITUTES THE CLERKS
ENDORSEMENT, REQUIRED BY SECTION 317-a(5) &
SECTION 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK. DO NOT DETACH OR REMOVE.

ADAM J BELLO

MONROE COUNTY CLERK





THE LAW OFFICES OF
Steve Boyd | John Elmore

August 13, 2019

Hon. Charles A. Schiano Jr.
Supreme Court, Monroe County
545 Hall of Justice
Rochester, NY 14614

RE: AB-1 Doe v. John Doe
Index. No. E2019007488

Dear Justice Schiano,

Attached please find the Affidavit of David G. Heffler, Ph.D., LMHC in support of our Petition.

Respectfully submitted,


Stephen Boyd, Esq.

SB/sls

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ERIE

AB 1 Doe,

Petitioner,

vs.

AFFIDAVIT

Index No.: 809838/2019

John Doe(s) 1 - 5,

Respondent.

David G. Heffler, Ph.D., LMHC, being duly sworn, hereby deposes and states:

1. I am a Licensed Mental Health Counselor in the State of New York and I am a clinically certified Sex Offender Treatment Specialist with respect to the National Association of Forensic Counselors. I also maintain a number of other certifications with respect to the treatment of sex offenders and their victims.

2. I have been asked to submit this affidavit by the law firm of OBrien & Ford, PC with respect to the Child Victims Act and the public identification of victims of sexual abuse in lawsuits. As always, when dealing with the victims of sexual abuse, we must keep in the forefront of our thinking the very simple fact that these victims did nothing wrong which in any way justifies their being sexually abused.

3. My professional experience with respect to victims of sexual abuse is that I have been involved in the treatment of individuals who have been the victims of sexual abuse for more than 30 years. A copy of my curriculum vitae is attached hereto as Exhibit A.

4. In the course of my care and treatment of adolescents and other victims of sexual abuse, I have become aware of the strong stigma attached to being a victim of sexual abuse. I have personally treated hundreds if not thousands of sexual abuse victims who have exhibited fear of their status as a victim of sexual abuse becoming known to family members or to others in their communities.

5. It has been my experience as a mental health care professional that many victims of sexual abuse either delay treatment or do not seek out treatment due to their fear of this identification as a sex abuse victim. Further, for those individuals who do seek treatment, many times they do so only upon receiving reassurance that their identities will not be made public.

6. I am aware that the Child Victims Act in New York State will allow many victims to receive compensation for their suffering. However, based on my education, training and experience as a Licensed Mental Health Counselor with expertise in the field of sexual abuse victimization, it is my professional opinion supported by research in the field of sexual abuse victimization that the public identification of the victims of sexual abuse will have a strong dampening effect on the willingness of these victims to come forward and seek compensation.

7. It is my expert opinion that the impact of being publicly identified could result in the same impact as having the offense take place all over again; the effect to the victims would be tantamount to a re-victimization against these victims, who have struggled for years to keep their names anonymous. As a result, many victims who were abused through no fault of their own will effectively be denied the justice that the law intends to provide.

8. I am aware that several law firms are requesting that all victims be allowed to proceed forward anonymously with respect to public court documents. I

4. In the course of my care and treatment of adolescents and other victims of sexual abuse, I have become aware of the strong stigma attached to being a victim of sexual abuse. I have personally treated hundreds if not thousands of sexual abuse victims who have exhibited fear of their status as a victim of sexual abuse becoming known to family members or to others in their communities.

5. It has been my experience as a mental health care professional that many victims of sexual abuse either delay treatment or do not seek out treatment due to their fear of this identification as a sex abuse victim. Further, for those individuals who do seek treatment, many times they do so only upon receiving reassurance that their identities will not be made public.

6. I am aware that the Child Victims Act in New York State will allow many victims to receive compensation for their suffering. However, based on my education, training and experience as a Licensed Mental Health Counselor with expertise in the field of sexual abuse victimization, it is my professional opinion supported by research in the field of sexual abuse victimization that the public identification of the victims of sexual abuse will have a strong dampening effect on the willingness of these victims to come forward and seek compensation.

7. It is my expert opinion that the impact of being publicly identified could result in the same impact as having the offense take place all over again; the effect to the victims would be tantamount to a re-victimization against these victims, who have struggled for years to keep their names anonymous. As a result, many victims who were abused through no fault of their own will effectively be denied the justice that the law intends to provide.

8. I am aware that several law firms are requesting that all victims be allowed to proceed forward anonymously with respect to public court documents. I

strongly support such a handling of public documents such that these victims of sexual abuse will have the opportunity to proceed anonymously with respect to any documents filed in court.

Dated: August 8, 2019

Amherst, NY


DAVID G. HEFFLER, Ph.D., LMHC

Christopher J. O'Brien
Notary Public
Sworn this 8th day of
August, 2019
CHRISTOPHER J. O'BRIEN
Notary Public, State of New York
Qualified in Erie County
Commission Expires July 20, 2022

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Date of Birth: September 6, 1948
Place of Birth: Niagara Falls, New York
Marital Status: Married, Three Children

Education

12/94 – 11/98 Pacific Western University
Los Angeles, California
Completion of requirements for Ph.D., Clinical Psychology
(Forensic Emphasis)

09/73 – 05/76 SUNY at Binghamton; Binghamton, NY
Ph. D. Candidate in Clinical Psychology
MA. Clinical Psychology; 81 Credit Hours Toward Ph.D.

01/71 – 06/73 SUNY at Buffalo; Buffalo, NY
B.A. (Cum Laude) Clinical/Community Psychology Emphasis

09/67 – 06/68 University of Nebraska; Lincoln, NE
Engineering Emphasis

Professional Licenses/Certifications

NYS Licensed Mental Health Counselor
License #003291

Clinically Certified Sex Offender Treatment Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Criminal Justice Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Forensic Counselor
Cert. #16571, National Association of Forensic Counselors

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Clinically Certified Juvenile Sex Offender Treatment Specialist
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Juvenile Treatment Specialist
Cert. # 16571, National Association of Forensic Counselors

Certified Sexual Disorder Diagnostician
Cert. #16571, National Association of Forensic Counselors

Clinically Certified Sexual Addictions Specialist
Cert. #16571, National Association of Forensic Counselors

Clinical and Administrative Experience

5/06 – Present

Forensic Mental Health Counseling of WNY, PLLC
239 Bewley Building, Lockport, NY 14094

Title: Accredited Forensic Counselor/Psychotherapist/Owner
Specializing in Forensic Risk Assessment and Treatment including sexual offenders and substance abuse, Extended Sexual Abuse Assessments, other criminal behaviors (e.g. Shop lifting, domestic violence, DWI) Return to work determinations, disability determinations, workers' compensation and No Fault.

1991 - 2006

Niagara Frontier Psychiatric Associates, PLLC
230 Bewley Building, Lockport, NY 14094
(716) 433-3927

Title: Psychotherapist/Executive Director
Treatment of affective and anxiety disorders; impulse control disorders, substance abuse, child, adolescent and couples treatment; and evaluation and treatment of sexual offenders. Clinical expertise in forensic mental health, sex offender evaluation/treatment and cognitive behavior therapy and behavior therapy techniques.

7/83 – 7/06

Western New York Children's Psychiatric Center
1010 East & West Road, West Seneca, NY 14224
(716) 674-9730

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7/03 – 7/06 (Retired) - Title: Executive Director

Chief Executive Officer for a NYS operated, JCAHO accredited, 46 bed, children and youth psychiatric facility. Under the governance of the NYS Office of Mental Health, responsible for all aspects of facility operation of inpatient and outpatient programs.

5/97 – 7/03 - Title: Chief of Outpatient Services

Responsible for overall development and operation of facility outpatient services. Includes contract and service negotiations and program developments. Member of Executive Cabinet of WNYCPC

2/89–5/97-Title: Outpatient Program Coordinator/Psychologist II

Responsible for administration of outpatient programs including Clinic Treatment, Day Treatment, Home Support/Crisis Team and Mobile Mental Health Team. Services provided primarily to severely emotionally disturbed children and adolescents. Responsibilities are: overall program operation, including budget, staffing, development of program policy and procedure, compliance with all relevant regulations and certifying agencies. Report to Mr. Jed Cohen, Acting Executive Director, WNYCPC.

7/84 –2/89 - Title: Chief of Inpatient Services

Responsible for administrative direction of inpatient treatment services. Supervision of clinical disciplines and management of various facility operations. Assist Director of Facility Administrative Services in supervision of, Labor Management, Safety, Food Service and Housekeeping, Maintenance and Capital Construction projects. Report to Executive Director.

7/83 – 7/84 - Title: Treatment Team Leader/Psychologist II

Responsible for clinical direction of four inpatient treatment teams, providing services to children and adolescents. Develop and implement, treatment plans, quality assurance activities, staffing, plans and overtime management.

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1975 - 1983

Willard Psychiatric Center
Willard, New York

**8/79 - 7/83 - Title: Program Director - Seneca County
Community Services Center**

**1977 - 1979 - Title: Treatment Team Leader/Psychologist II -
Adult Services; Seneca and Wayne County Inpatient Treatment
Units**

**1975 - 1978 - Title: Psychologist II - Seneca and Wayne County
Inpatient Treatment Units**

1976 - 1980

Seneca County Mental Health Clinic
Waterloo, NY
Title: Psychologist, part-time

1973 - 1975

Binghamton Psychiatric Center
Binghamton, NY
Title: Psychologist Trainee

1972 - 1973

SUNY at Buffalo
Buffalo, NY
Title: Researcher, Co-Author for NIMH Funded Research

Teaching Experience

11/00-present

State University of New York at Buffalo
Department of Psychiatry, School of Medicine
Title: Clinical Instructor

1976 - 1982

Rochester Institute of Technology
Eisenhower Campus, Rochester, NY
Title: Visiting Professor
Instructor for Theories of Learning, Theories of Personality, and
Tests and Measurements.

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Memberships and Affiliations and Awards

National Association for the Treatment of Sexual Abusers (ATSA)

New York State Chapter of The Association for the Treatment of Sexual Abusers (NYSATSA)

National Association of Forensic Counselors

New York Mental Health Counselors Association

American Board of Disability Analysts

American Professional Society on the Abuse of Children (APSAC)

Awarded the "2013 Shepard Goldberg Champion of Children Award" by Child and Adolescent Treatment Services, Buffalo, NY

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Specialized Training and Expertise

**Child Forensic Interview Clinic, American Professional Society
on the Abuse of Children (March 15-19, 2013)**

40 hour training on conducting empirically-based child Forensic Interviews.

Former - Special Investigator, NYS Office of Mental Health

Conduct special investigations regarding allegations of abuse and neglect within NYS Office of Mental Health and facilities.

Publications and Highlighted Conference Presentations

Taheri, M.S., Heffler, D.G., "Making Your Client a More Effective Witness." The Federal Public Defender Report, October 1995

Heffler, D.G., Lisman, S.A., "Attribution and Insomnia: a Replication Failure," The Psychological Record, 1978, 28, 123-128.

Lick, J.R., Heffler, D.G., "Relaxation Training and Attention Placebo in the Treatment of Severe Insomnia," Journal of Counseling and Clinical Psychology, 1977, Vol. 45, Number 2, 153-161.

Heffler, D.G., Connor, W.H., "Assertion Training with Psychiatric Patients." Presented at the 1978 Conference of Psychologists in New York State Service.

Heffler, D. G., "Identification and Assessments of Adolescent Sexual Abusers," Grand Rounds Presentation Catholic Health System of Buffalo, 11/30/99.

Heffler, D.G., "Identification of Healthy and Unhealthy Sexual Behavior in Children and Adolescence." Presentation to Erie County Probation Department, 10/03.

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders. Presentation to the Erie County Probation Department, 5/03

Heffler, D.G., "Sex Offender Treatment", NYS Child Advocacy Resource and Consultation Center, 9/07

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Heffler, D.G., "Sex Offender Assessment and Treatment (Adults and Adolescents), Presentation for
Niagara County Child Advocacy Center, 5/08

Heffler, D.G., "Adult and Adolescent Sexual Abuser Assessment & Treatment,
Conference Presentation for Bivona Summit on Child Abuse, 4/09

Heffler, D.G., "Apology, Reconciliation and Reunification: Should Sex Offenders
Reunite with their Families?"

"Adolescent Sexual Abusers: Distinctions Among Abusers:
Are They Tomorrow's Adult Offenders?"
Conference Presentation: Bivona Summit on Child Abuse, 4/10

Heffler, D.G., "Apology, Reconciliation and Reunification: Should Sex Offenders
Reunite with their Families?"

"Adolescent sexual abusers: Distinctions among abusers. Are they
tomorrow's adult offenders?"
Conference Presentation for Niagara County Child Advocacy Center, 4/10

Heffler, D.G., "Characteristics and Typology of Child Sexual Behavior Problems -- Including
Distinction between Normative and Problematic Sexual Behaviors."

"Key Considerations for Reconciliation of Adult Sexual Offenders and Their
Families."

Conference Presentation: Bivona Summit on Child Abuse, 4/11

Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders"
Presentation: Town Justices of Niagara County, 5/12

Heffler, D.G., "Assessment and Treatment of Adolescent Sexual Abusers"
Presentation: Niagara County Department of Social Services, 6/12

Heffler, D.G., "Hey Doc, is this normal? Characteristics and Typology of Juvenile
Sexual Behavior problems"

"Ready or not, here I come! When the sexual perpetrator returns home."
Conference Presentation: Niagara County Child Advocacy Center, 10/12

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Heffler, D.G., "Assessment and Treatment of Adult Sexual Offenders",
Presentation: Defense Bar, 10/12

Heffler, D.G., "Conducting Extended Sexual Abuse Assessments"
Presentation: Erie County, Assigned Counsel, 9/13

Heffler, D.G., "Assessment and Treatment of Sexual Offenders: Suspension of Conscience
Presentations: Erie County, Judges, Amherst New York, 1/14

Heffler, D.G., "Character Psychopathology and The Sexual Offender"; "The Science of Evil –
Empathy Deficits and Criminogenic Behavior"
Conference Presentations: Niagara County Safe at Home Conference, 10/14

Heffler, D.G., "Dynamics of Domestic Violence and The Science of Evil"
Presentation: Niagara County Department of Social Services, 9/15

Heffler, D.G., "Do People Change? Character Psychopathology and the Sexual Offender and The
Science of Evil – Empathy Deficits and Criminogenic Behavior"
Presentation: New York State Probation Officers Association, 7/16

Heffler, D.G. "Current Trends in Sexual Offender Treatment"
Presentation: Erie County Committee on Alternative to Incarceration, 12/16

Heffler, D.G. "Extended Child Sexual Abuse Assessments and Typology and Assessment of Child
Pornography"
*Presentation: Legal Aid Bureau of Buffalo, Inc. – Mental Health Issues and The
Law, 2/2017*

Heffler, D.G. "Responding to Child Sexual Behaviors and Management of Child Victims of Sexual
Abuse"
Presentation: Niagara County Department of Social Services, 5/2017