

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
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RE: *Evan Warren Sokolove v. Roxane Sokolove Marenberg*,
C.A. No. S13C-08-022 RFS

ORDER

After consideration of the positions presented by counsel at oral argument, Plaintiff Evan Warren Sokolove's ("Evan's") Motion to Open Record and to Vacate Gag Order is **GRANTED**.

Defendant Roxane Sokolove Marenberg ("Roxane"), against whom Evan brings this action for alleged sexual abuse inflicted by Roxane on Evan throughout his childhood and early adolescence, first requests that the Court not rule on the

present Motion, but rather direct the parties, through their own cooperation or the aid of a neutral third party, to craft a protective order concerning issues that, on balance, should remain confidential. If the Court rules on the Motion, Roxane requests that the record remain sealed and the gag order in place until the close of discovery. Her first argument is that no public interest is served in unsealing patently false allegations which will be, or in some cases have been proven untrue. Roxane's second argument is that unsealing the salacious accusations of this troubled young man would grossly outweigh any benefit to him, as it would cause not just Roxane, but the other women in Evan's past against whom he alleged abuse, to suffer public humiliation and re-victimization.

Under this Court's Civil Rule 5(g), all materials relating to a case are open for public access, unless good cause is shown.¹ Although permissible, parties cannot remove cases from the public's view with ease. As the Delaware Court of Chancery has noted, there "is [a] legal duty of the tribunal to honor the legitimate interest of the

¹ Super. Ct. Civ. R. 5(g)(1)–(2) ("Except as otherwise provided by statute or rule, including this Rule 5(g) and Rule 26(c), all pleadings and other papers of any nature filed with the Prothonotary . . . shall become part of the public record of the proceedings before this Court. Court Records or portions thereof shall not be placed under seal unless and except to the extent that the person seeking the sealing thereof shall have first obtained, for good cause shown, an order of this Court specifying those Court Records, categories of Court Records, or portions thereof which shall be placed under seal . . .").

public and the press in access to judicial proceedings.”² The Court cannot conclude that the extraordinary measure of keeping the record sealed is warranted in this case, even if Evan’s allegations are blatantly false and Roxane and others will suffer public humiliation and re-victimization. The Court finds that its Civil Rule 11³ provides the solution to both of Roxane’s concerns. Rule 11 operates to curtail the filing of baseless complaints.⁴ Also, Rule 11 protects the unfortunate defendant whose reputation will suffer from being confronted with groundless allegations.⁵

² *Kronenberg v. Katz*, 872 A.2d 568, 609 (Del. Ch. 2004).

³ Super. Ct. Civ. R. 11(b) (“By representing to the Court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.”).

⁴ *Disney v. Walt Disney Co.*, 857 A.2d 444, 448 (Del. Ch. 2004) (“Court of Chancery Rule 11 and analogous rules governing proceedings in other courts provide an important constraint on the public disclosure of [confidential] information, as the person signing the complaint is representing to the court that it is not being presented for an improper purpose, such as to harass and that the allegations have evidentiary support. Moreover, the court will itself play a role in determining whether or to what extent otherwise confidential information found in the record of the litigation should be made public.” (footnote omitted) (internal quotation marks omitted)).

⁵ *Kronenberg*, 872 A.2d at 609 (“[T]he record . . . reveals that the only injury Katz and EnterSport claim is the injury to their reputation because the plaintiffs made accusations of wrongdoing against Katz in a complaint. Katz has not filed a motion under Rule 11 claiming the

The Court does find it necessary, however to address the potential problem of extrajudicial statements that can materially prejudice these proceedings. The parties in this case have a right to have the merits of this case determined by a fair and impartial jury which will decide the issues solely upon the evidence presented at trial. The Court reminds all lawyers involved in this case, including those admitted *pro hac vice*, that they are bound by the Delaware Lawyers' Rules of Professional Conduct ("Rules"), which imposes on the lawyers, among other things, the requirement that they may not advise clients to do what the Rules forbid of them.⁶ Given possible media coverage about this case, the Court finds that unless an order limiting publicity is entered, there is a substantial likelihood of material prejudice to the parties' rights to a fair trial.

NOW, THEREFORE, IT IS ORDERED:

- 1) Motion to Open Record and to Vacate Gag Order is **GRANTED**.
- 2) Counsel for both parties are precluded from public commentary regarding

complaint was frivolous, however. All he has done is claim that the plaintiffs' accusations are unfounded and cursorily alleged that this injured his run for Mayor and his reputation as a businessman. That is, all Katz has alleged is that he has faced the common problem of any person accused of commercial wrongdoing in a court of public record, which is that some people will believe the plaintiffs' accusations and not the defendant's denial.").

⁶ See *State v. Grossberg*, 705 A.2d 608, 612 (citing Del. Lawyers' Rules of Prof'l Conduct R. 3.6 as holding that lawyers may not use clients as conduits for violating the Rules, and as such, any preparation of clients regarding extrajudicial statements must be "limited to those areas which [the lawyers themselves] would have been to permitted to comment").

this case, except in accordance with Rule 3.6 of the Rules.

3) The parties themselves are precluded from public commentary regarding this case, except in accordance with Rule 3.6 of the Rules.

4) All persons assisting or associated with counsel for both parties are precluded from public commentary regarding this case, except in accordance with Rule 3.6 of the Rules.

5) Counsel for both parties shall promptly make the parties and all other persons that this Order binds aware of this Order.

6) The parties have not been able to agree on a comprehensive protective order for potential confidential information. Should concerns arise during discovery, the parties may seek a protective order under this Court's Rule 26(c).

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Cc: Prothonotary
Judicial Case Manager