

UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
PORTLAND DIVISION

N.S., by and through Timothy Marble,  
her Conservator,

Case No. 3:16-cv-2171-AC

Plaintiff,

OPINION AND ORDER

v.

STEVEN DOUGLAS ROCKETT,

Defendant.

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ACOSTA, Magistrate Judge:

Plaintiff N.S. initiated this lawsuit against defendant Steven Douglas Rockett (“Rockett”), asserting a claim under 18 U.S.C. § 2255. Rockett answered the complaint, and included two motions in his answer. (ECF No. 5.) First, Rockett moves to compel N.S. to proceed under her full name. Second, Rockett moves to stay this lawsuit until his criminal appeals relating to the same subject matter as this lawsuit are resolved. The court denies both motions. The court further orders both parties to refer to N.S. only by her initials throughout this lawsuit.

*Background*

N.S. alleges the following facts in her complaint. N.S. is a minor. (Compl. (ECF No. 1) ¶ 4.)

Rockett raped and otherwise sexually abused N.S., including an incident where Rockett solicited sexually explicit images from N.S. (*Id.* ¶¶ 6–7.) A federal jury convicted Rockett of multiple criminal charges. (*Id.* ¶ 9.) One of Rockett’s federal convictions arose from Rockett’s solicitation of sexually explicit images from N.S. (*Id.*) A jury in state court also convicted Rockett of multiple criminal charges, some of which arose from Rockett’s sexual abuse of N.S. (*Id.* at ¶ 8.)

### *Standards*

#### I. Use of Initials.

“The normal presumption in litigation is that parties must use their real names.” *Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate*, 596 F.3d 1036, 1042 (9th Cir. 2010). Some exceptions allow parties to proceed anonymously, though. Under Federal Rule of Civil Procedure (“Rule”) 5.2(a), court filings must refer to individuals known to be minors by the minor’s initials, unless the court orders otherwise. Ninth Circuit precedent also “allow[s] parties to use pseudonyms in the ‘unusual case’ when nondisclosure of the party’s identity ‘is necessary ... to protect a person from harassment, injury, ridicule or personal embarrassment.’” *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1067–68 (9th Cir. 2000) (quoting *United States v. Doe*, 655 F.2d 920, 922 n.1 (9th Cir. 1981)). Courts balance “the need for anonymity against the general presumption that parties’ identities are public information and the risk of unfairness to the opposing party.” *Id.* at 1068 (citations omitted). Courts applying this balancing test have recognized three situations allowing a plaintiff to proceed anonymously:

- (1) when identification creates a risk of retaliatory physical or mental harm;
- (2) when anonymity is necessary to preserve privacy in a matter of sensitive and highly personal nature; and
- (3) when the anonymous party is compelled to admit his or her intention to engage in illegal conduct, thereby risking criminal prosecution.

*Id.* (internal quotation marks and citations omitted).

## II. Motion to Stay.

Federal courts may, but are not constitutionally required to, stay civil lawsuits because of parallel criminal proceedings. *Fed'l Sav. & Loan Ins. Co. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). First, courts “consider the extent to which the defendant’s fifth amendment rights are implicated.” *Id.* at 903. Courts also consider other case-specific factors, including:

- (1) the interest of the plaintiffs in proceeding expeditiously with this litigation or any particular aspect of it, and the potential prejudice to plaintiffs of a delay;
- (2) the burden which any particular aspect of the proceedings may impose on defendants;
- (3) the convenience of the court in the management of its cases, and the efficient use of judicial resources;
- (4) the interests of persons not parties to the civil litigation; and
- (5) the interest of the public in the pending civil and criminal litigation.

*Id.* (quoting *Golden Quality Ice Cream Co. v. Deerfield Specialty Papers, Inc.*, 87 F.R.D. 53, 56 (E.D.Pa.1980)).

### *Analysis*

#### I. Motion to Compel N.S. to Use Her Full Name.

Rockett moves to compel N.S. to use her full name, arguing N.S. does not fulfill any of the criteria allowing use of initials or a pseudonym. The court disagrees. N.S. was unquestionably a minor when this lawsuit commenced. Rule 5.2(a) required N.S. to proceed using her initials at the time N.S. filed her complaint. Even if N.S. attained the age of majority after filing her complaint, as Rockett represents in his motion, Rule 5.2 still applied at the time of filing.

The court also concludes N.S. should be allowed to proceed under her initials throughout this lawsuit, even after she is no longer a minor. A plaintiff generally may proceed under initials or a pseudonym when asserting a claim based on sexual abuse or assault, especially where the plaintiff

was a minor when the assault allegedly occurred. *See Jordan v. Gardner*, 986 F.2d 1521, 1525 (9th Cir. 1993) (“In keeping with the tradition of not revealing names of the victims of sexual assault, we use initials here to protect the privacy of the [plaintiffs].”). Such cases fall into the second category of cases identified in *Advanced Textile*: “when anonymity is necessary to preserve privacy in a matter of sensitive and highly personal nature.” *Adv. Textile Corp.*, 214 F.3d at 1068. For example, a court allowed an adult plaintiff to proceed using her initials when asserting claims arising from sexual assault that occurred when she was a minor. *R.P. v. Seattle Sch. Dist.*, No. C13-2218-MJP, 2014 WL 639408, at \*1–2 (W.D. Wash. Feb. 18, 2014). The *R.P.* court held that “clear public policy considerations” favor allowing victims of sexual assault to remain anonymous, both “to protect the privacy of . . . rape victims” and “protect[] the identities of sexual assault victims so that other victims will not be deterred from reporting such crimes.” *Id.* at \*1–2 (citations omitted).

The cases Rockett cites in support of requiring N.S. to use her full name are not persuasive. Generally, Rockett relies on cases from other circuits that have required plaintiffs who allege sexual assault or abuse to proceed under their full names because they chose to file a lawsuit. *See, e.g., Doe v. Shakur*, 164 F.R.D. 359, 361 (S.D.N.Y.1996). The cases Rockett cites are inconsistent with Ninth Circuit precedent because they do not consider the public-policy and privacy concerns favoring anonymity of victims of sexual assault. *Cf. R.P.*, 2014 WL 639408, at \*1–2. Upon consideration of the appropriate public-policy and privacy concerns, the district courts of this circuit uniformly allow plaintiffs alleging sexual assault to proceed under pseudonyms. *A.T. v. Everett Sch. Dist.*, No. C16-1536-JLR, 2017 WL 784673, at \*1 n.3 (W.D. Wash. Feb. 28, 2017) (allowing an adult plaintiff alleging sexual assault to proceed using initials); *J.J. v. Olympia Sch. Dist.*, Case No. C16-5060-BHS, 2016 WL 3597784, at \*2 (W.D. Wash. July 5, 2016) (allowing an adult plaintiff alleging

sexual assault as a minor to use initials); *Doe v. W. Am. Province of the Capuchin Franciscan Friars*, No. 2:14-cv-01428-HZ, 2015 WL 8770017, at \*1 n.1 (D. Or. Dec. 13, 2015) (same); *Doe v. Penzato*, No. CV10-5154-MEJ, 2011 WL 1833007, at \*3–5 (N.D. Cal. May 13, 2011) (allowing an adult plaintiff alleging sexual assault to proceed using initials).

Rockett also fails to identify any prejudice he would suffer from N.S.’s use of her initials. Rockett does not contend he is unaware of N.S.’s true identity. Instead, Rockett’s motion and the circumstances of the case strongly evidence that Rockett knows the identity of N.S. In her complaint, N.S. identifies herself as the victim of specific criminal offenses of which Rockett was convicted. (Compl. ¶ 6–9.) Rockett represents that N.S. testified in his state and federal criminal trials. (Answer ¶ 17.) He also implies knowledge of N.S.’s birthdate. *Id.* In totality, the court concludes Rockett is aware of N.S.’s identity. He does not identify any other prejudice to him due to N.S.’s use of a pseudonym. Accordingly, the court should require the parties to refer to N.S. only by her initials in all public filings, even after she is no longer a minor.

In sum, the court concludes Rule 5.2(a) requires N.S. be allowed to proceed under her initials because she was a minor when this lawsuit commenced. Moreover, the highly sensitive nature of N.S.’s allegations, public-policy and privacy concerns favoring anonymity for victims of sexual assault and abuse, and lack of prejudice to Rockett would merit allowing N.S. to proceed under her initials even if she were not a minor when the case began. The court thus denies Rockett’s motion to compel N.S. to use her full name. The court also orders N.S. be allowed to proceed under her initials during the pendency of this lawsuit, and bars any reference by either party to N.S.’s full name in any publically filed documents.

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## II. Motion to Stay.

Rockett also moves to stay this lawsuit until resolution of his state and federal criminal appeals. Courts have discretion to stay a civil lawsuit because of related criminal proceedings. *Molinaro*, 889 F.3d at 902. Where the related criminal proceeding is an appeal challenging a criminal conviction, a stay is generally inappropriate. *Doe v. City of San Diego*, No. 12-CV-689-MMA-DHB, 2012 WL 6115663, at \*2 (S.D. Cal. Dec. 10, 2012) (citing *Milton Pollack, Parallel Civil and Criminal Proceedings*, 129 F.R.D. 201, 204 (1989)).

The court first considers the extent to which this lawsuit implicates Rockett's Fifth Amendment rights. *Molinaro*, 889 F.3d at 902. Rockett argues the potential for a retrial following a successful appeal implicates his Fifth Amendment rights. N.S. contends Rockett's Fifth Amendment rights are not implicated at all because of his convictions for the conduct alleged in N.S.'s complaint. Until Rockett exhausts his appellate remedies, however, he has some Fifth Amendment interest based on the potential for a retrial. *Doe*, 2012 WL 6115663, at \*2. Thus, this lawsuit implicates Rockett's Fifth Amendment rights because N.S.'s allegations overlap with the subject matter of Rockett's criminal conviction. *See Keating v. Office of Thrift Supervision*, 45 F.3d 322, 325 (9th Cir. 1995) (defendant's Fifth Amendment rights were implicated when the subject matter of the civil proceeding and criminal prosecution overlapped). But implication of Fifth Amendment rights is not the end of the *Molinaro* inquiry. *Molinaro* also requires examination of the extent to which the civil proceeding implicates a party's Fifth Amendment rights. *Molinaro*, 889 F.3d at 902. The court concludes that the remoteness of potential retrial implicates Rockett's Fifth Amendment rights only to a minimal extent. *Doe*, 2012 WL 6115663, at \*2.

The five remaining *Molinaro* factors outweigh the minimal implication of Rockett's Fifth

Amendment rights. First, N.S. argues a stay in this case would harm her interest in timely resolution of this matter and otherwise prejudice her ability to pursue this lawsuit. N.S. represents that she intends to “promptly” move for summary judgment on her claim, and that a stay would harm her interest in timely resolution of this lawsuit. N.S. also argues delay might result in dissipation of Rockett’s assets and a loss of available evidence, resulting in prejudice to N.S. The first *Molinaro* factor weighs against staying this lawsuit.

Second, Rockett argues he would be prejudiced if the court does not grant a stay. Rockett contends defending himself in this case would require him to choose between defending against this lawsuit and retaining his Fifth Amendment rights in the event of a retrial. *But see Keating*, 45 F.3d at 326 (“A defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege.”). He also argues that defending himself in this case would allow discovery beyond the scope allowed in criminal proceedings and require him to disclose his criminal defense strategy. Finally, Rockett argues he would be prejudiced in the event his criminal appeals are successful because N.S.’s complaint relies on his criminal convictions.

The court concludes that the prejudice Rockett asserts is substantially diminished because it is contingent on an uncertain event — the success of one or both of his pending criminal appeals. The contingency and remoteness of a future retrial or dismissal of the charges against Rockett substantially diminish the potential prejudice to Rockett from proceeding with the case. *See Sec. & Exch. Comm’n v. Braslau*, No. 14-01290-ODW (AJWX), 2015 WL 9591482, at \*4 (C.D. Cal. Dec. 29, 2015); *Taylor v. Ron’s Liquor Inc.*, No. C-10-00694-SI, 2011 WL 499944, at \*2, 4 (N.D. Cal. Feb. 8, 2011) (“[W]here trial in the parallel criminal proceeding has concluded, and a conviction is being challenged on appeal, the analysis shifts against staying the civil proceedings.”). Accordingly,

the second *Molinaro* factor weighs slightly in favor of a stay.

Under the third *Molinaro* factor, staying the case would detrimentally affect the court's interest in managing its caseload. *See Molinaro*, 889 F.2d at 903 (“the court has an interest in clearing its docket”). The parties do not argue, nor does the court observe, any third-party or public interests in staying or proceeding with this lawsuit.

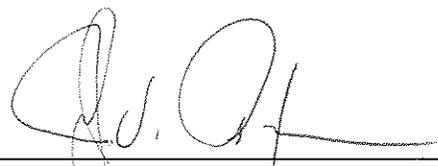
The court finds that the factors identified by the parties outweigh the minimal extent to which this case implicates Rockett's Fifth Amendment rights. Both Rockett's Fifth Amendment interest in this lawsuit and the prejudice he identifies are contingent on the success of his criminal appeals. In contrast, the prejudice to N.S. and the detriment to the court's case-management interest is imminent and certain. While the court expresses no opinion on the merits of Rockett's appeals, the potential for Rockett to prevail in his criminal appeals is an insufficient basis for staying this lawsuit. Accordingly, the court should deny Rockett's motion to stay.

#### *Conclusion*

Rockett's motion to compel N.S. to use her full name and motion to stay (ECF No. 5) are DENIED. The parties are ordered to refer to N.S. by her initials in all publically filed documents throughout the pendency of this lawsuit.

IT IS SO ORDERED.

DATED this 10th day of April, 2017.



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JOHN V. ACOSTA  
United States Magistrate Judge