

fears that using her full name would reveal the identity of her minor child. Plaintiff fears that widespread knowledge of Abraham's HIV status might lead to further stigma and discrimination against him. Plaintiff would not be likely to pursue this litigation individually and on behalf of her son unless she is permitted to proceed under pseudonym.

II. LEGAL ANALYSIS

A. Plaintiff's Name May Be Redacted Because Disclosure of Her Identity Would Disclose The Identity of Her Son, A Minor Child

Local Rule 5.1.3 provides that, "[a]s documents in civil cases may be made available for personal inspection in the office of court at the United States Courthouse, or, if filed electronically, may be made available on the court's Electronic Case Filing system, such personal identifiers as ... names of minor children should be modified or partially redacted In all documents filed either in traditional paper form or electronically." *See also* Fed. R. Civ. P. 5.2(a)(3) (providing that, in filings with district courts, the name of an individual known to be a minor must not include the minor's full name).

Other district courts have held that the protections afforded by Fed. R. Civ. P. 5.2 would "be eviscerated" unless the parent's identity in the complaint was also protected. *P.M. v. Evans-Brant Central School Dist.*, No. 08-cv-168A, 2008 WL 4379490, at *3 (W.D.N.Y. Sept. 22, 2008) ("Since a parent must proceed on behalf of a minor child, the protection afforded to the minor would be eviscerated unless the parent was also permitted to proceed using initials."); *see also Doe v. Porter*, 370 F.3d 558 (6th Cir. 2004) (affirming district court's decision to allow parents and minor children to litigate pseudonymously, noting the "heightened protection" courts grant to minor children).

Plaintiff should be permitted to proceed under pseudonym because the protection afforded to her son, Abraham, pursuant to Local Rule 5.1.3 would be eviscerated if she was

required to proceed using her full name.

B. Plaintiff May Proceed Under Pseudonym Because Plaintiff Has A Reasonable Fear Of Severe Harm To Her And Her Minor Child

In addition, while not expressly permitted under Federal Rule of Civil Procedure 10(a), in exceptional cases, courts have allowed a party to proceed anonymously. *See Doe v. Megless*, 654 F.3d 404, 408 (3d Cir. 2011). In such cases, a plaintiff must show “both (1) a fear of severe harm, and (2) that the fear of severe harm is reasonable.” *Id.* When a litigant sufficiently alleges that he or she has a reasonable fear of severe harm from litigating without a pseudonym, district courts should balance a plaintiff’s interest and fear against the public’s strong interest in an open litigation process. *Id.*

The Court of Appeals for the Third Circuit has instructed district courts to consider the following factors when deciding a motion to proceed under pseudonym: (1) the extent to which the identity of the litigant has been kept confidential; (2) the bases upon which disclosure is feared or sought to be avoided, and the substantiality of these bases; (3) the magnitude of the public interest in maintaining the confidentiality of the litigant’s identity; (4) whether, because of the purely legal nature of the issues presented or otherwise, there is an atypically weak public interest in knowing the litigant’s identities; (5) the undesirability of an outcome adverse to the pseudonymous party and attributable to his refusal to pursue the case at the price of being publicly identified; (6) whether the party seeking to sue pseudonymously has illegitimate ulterior motives; (7) the universal level of public interest in access to the identities of litigants; (8) whether, because of the subject matter of this litigation, the status of the litigant as a public figure, or otherwise, there is a particularly strong interest in knowing the litigant’s identities, beyond the public’s interest which is normally obtained; and (9) whether the opposition to pseudonym by counsel, the public, or the press is illegitimately motivated. *Id.*

1. Courts Routinely Permit Plaintiffs To Proceed Under Pseudonym in Cases Involving HIV Status

The Court of Appeals for the Third Circuit has noted that AIDS is an example of cases where courts have allowed plaintiffs to proceed under pseudonyms. *Id.* (citing *Doe v. Borough of Morrisville*, 130 F.R.D. 612, 614 (E.D. Pa.1990)). Numerous courts have also recognized that HIV positive plaintiffs “are in a highly sensitive position and therefore should be allowed to proceed anonymously.” *Roe v. City of New York*, 151 F. Supp. 2d 495, 510 (S.D.N.Y. 2001) (citing cases); *see also EW v. New York Blood Center*, 213 F.R.D. 108, 110 (E.D.N.Y. 2003) (holding that the prejudice of embarrassment and fear of stigmatization because plaintiff had a “sexually and blood-transmitted disease” like AIDS “is real.”); *W.G.A. v. Priority Pharmacy, Inc.*, 184 F.R.D. 616, 617 (E.D. Mo. 1999) (granting motion of HIV positive plaintiff to proceed with initials and stating “[i]t is understandable that plaintiff does not wish to be publicly identified as an individual with AIDS, which is a personal matter of utmost intimacy. Persons with AIDS may be subjected to discrimination in the workplace, schools, social settings and public accommodations.”); *Roe v. City of Milwaukee*, 37 F. Supp. 2d 1127, 1129 (E.D. Wis. 1999) (holding that plaintiff’s HIV-positive status was a “compelling reason” to allow him to proceed under a pseudonym and stating that “I believe that in modern society one’s HIV-positive status, unlike most other medical conditions, is still considered a stigma”); *Patient v. Corbin*, 37 F. Supp. 2d 433, 434 (E.D. Va. 1998) (“Being HIV positive carries a significant stigma in many parts of today’s society. ... Therefore, proceeding anonymously is appropriate.”); *Doe v. Deer Mountain Day Camp, Inc.*, No. 07-cv-5495(S.D.N.Y. Jun. 22, 2007) (permitting minor and his parent alleging HIV discrimination against camp to proceed under pseudonym).

2. Plaintiff’s Interest In Proceeding Under Pseudonym Outweighs Public Disclosure

Here, the Court should permit Plaintiff to proceed under pseudonym because using her

full name would disclose her son's HIV positive status. The *Megless* factors support granting Plaintiff's motion.

First, because this Motion is being submitted in connection with the filing of this Complaint, Plaintiff and her son's identity has been kept confidential. Although Defendant is aware of the identity of Plaintiff and her son, the AIDS Law Project of Pennsylvania has requested that Defendant keep Abraham's HIV positive status confidential, and has requested that his status not be disclosed to any individuals who are not directly involved in litigating or resolving this matter.

Second, there is a strong need to maintain the confidentiality of Plaintiff and her son's identity. As the above-cited cases recognized, and as the allegations in the Complaint make clear, HIV still, unfortunately, carries a stigma. Last year, the AIDS Law Project of Pennsylvania received approximately three calls per week with requests for assistance relating to discrimination on the basis of HIV status. In addition, the Pennsylvania General Assembly has recognized the confidential status of HIV related information, and established "confidentiality requirements which protect individuals from inappropriate disclosure and subsequent misuse of confidential HIV-related information." Confidentiality of HIV-Related Information Act, 35 P.S. § 7602. Plaintiff has a substantial interest in maintaining the confidentiality of her son's HIV status, which will not be protected absent permitting her to proceed under pseudonym.

Third, if Plaintiff is not permitted leave to proceed under pseudonym, she may not be willing to proceed with this lawsuit. Plaintiff's primary concern is protecting her son against further discrimination, which may result if his identity is revealed. It would be a gross injustice if Defendant's discriminatory conduct remained unaddressed because Plaintiff could not proceed under pseudonym.

Finally, Plaintiff has no illegitimate motives in seeking to proceed under pseudonym. Neither she nor her son is a public figure, such that there would be a particularly strong interest in knowing their identities. Further, Defendant will suffer no prejudice because it is aware of the true identities of Plaintiff and her son.

These factors strongly support granting Plaintiff's Motion.¹

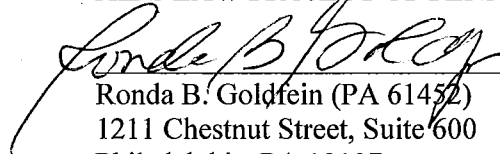
III. CONCLUSION

For the reasons discussed above, Plaintiff's Motion should be granted and Plaintiff should be permitted to proceed under pseudonym.

Dated: November 30, 2011

Respectfully submitted,

AIDS LAW PROJECT OF PENNSYLVANIA


Ronda B. Goldfein (PA 61452)
1211 Chestnut Street, Suite 600
Philadelphia, PA 19107
(215) 587-9377 (tel.)
(215) 587-9902 (fax)

Attorney for Plaintiffs

¹ If the Court so requires, Plaintiff will submit a complaint under seal bearing her full name.