

BECOMING A PLAINTIFF WITHOUT REVEALING YOUR IDENTITY

We understand that choosing to participate in a lawsuit is a very difficult decision. Victims who bring a lawsuit (“plaintiffs”) risk danger to themselves and their families. We do not want to minimize those concerns in any way. We cannot guarantee that your identity will remain secret. However, measures can be taken which would allow you to participate in a case without disclosing your identity until later in the case, or possibly not at all if the person we are suing (“defendant”) does not defend the lawsuit. You will need to balance the advantages of becoming involved in the suit against the risk that creates for you or to other persons. We want to explain to you these procedures and discuss the limitations on the protection that we can provide you.

If you wish to be a plaintiff in a case, but you do not want to disclose your identity, you can participate by using a made-up name in place of your real name (“pseudonym”). The most common way to do this is for us to list your name as Jane Doe or John Doe in documents we submit to the court. The first document that is always submitted to the court is the “complaint,” which lists the allegations being made against the defendant. The complaint is the first document in which you would be listed as Jane Doe or John Doe. We would also be required to submit another document to the court telling the judge your real name, but the court would keep this document in secret and would not give it to the defendant. The courts are careful about not revealing information that they have agreed to keep secret.

At this early stage, there will likely be no problem hiding your identity. After the complaint is filed, much of the future of the case will depend on whether the defendant decides to defend the case. In the United States, a defendant is not required to participate in a “civil” lawsuit (a case which is only for money and does not include any criminal charges or the possibility that the defendant will go to jail). Therefore, it is possible that the defendant will not participate in this case. If the defendant does not participate, it is much more likely that a court will permit you to keep your identity secret.

If the defendant does participate in the case, then some time after the complaint is filed a process known as “discovery” begins. Discovery is the phase in which the parties are allowed to ask each other for information and documents about the case. In the United States, discovery is very broad and the parties have the right to ask for the identities of the plaintiffs and witnesses, and to obtain information and documents about them.

As a result, plaintiffs who file as Jane or John Doe often have to reveal their identities to the defendant and his lawyers once discovery begins. If the defendant asks for this information, the judge is likely to order us to reveal your name to the defendant and his lawyers. This is because the defendant has a right to defend himself and that is very difficult if the defendant does not know the names of the plaintiffs.

It is important to understand that disclosure of your name means only that we have to reveal your name to the defendant and his lawyers. This does not mean that we have to announce your name to the public.

If the judge requires disclosure of your name during the discovery period, you will then have to make a decision. If the disclosure of your name to the defendant would cause great risk to you or your family, you have the option of withdrawing from the case at that time. If you choose to withdraw, your name will not be disclosed to the defendant or anyone else. However, by withdrawing, you would not be able to share any money that might be collected as a result of a judgment in the case. Once you withdraw, you are no longer a plaintiff or a party in the lawsuit.

If you decide to remain a plaintiff in the case, we can take some measures to prevent your name from being released to the public. We can ask the judge to issue a “protective order,” prohibiting the defendant and his lawyers from revealing your name to anyone else. In other words, the defendant and his lawyers would not be allowed to give your name to the government of the country where the abuses occurred or to anyone else who is not a party to the lawsuit. There is no guarantee that the judge will grant the order. However, if we can establish that you or your family would be exposed to a significant risk of danger if your names were revealed to the public, the judge would likely issue a protective order.

If the judge grants a protective order, your name could not be revealed to the public, but the defendant’s lawyers would still have the right to ask you questions (in a proceeding known as a “deposition”) and to ask you to provide documents in your possession that relate to the case. The defendant and his lawyers would have access to this information, but the public would not. However, you must also take into account that if the defendant violated the protective order and secretly revealed your name to persons who might retaliate against you or your family, it would be very difficult to prove that the defendant was the person responsible for disclosing it. So, although the protective order should keep your name a secret between us and the defendant, it is not an absolute guarantee that your name will not be revealed to others.

In the United States, trials are usually open to the public, and if this case reaches a trial you might be required to testify. If you testify, there is no guarantee that you will be able to keep your identity secret from the public. Different courts have decided on different rules concerning testimony by plaintiffs who do not want to reveal their identities. Some judges exclude the public from part of the trial and allow plaintiffs to testify in private. However, other judges allow the public to listen even though plaintiffs would prefer to keep their identities secret. So at this time there is no way to anticipate whether you would be permitted to testify without revealing your identity.