

Publications

Judge Orders Philadelphia Media Company to Disclose Identity of Anonymous Commenter

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For several years now, news outlets have grappled with how to civilize the comments sections on their online articles. Some have chosen the path of requiring users to sign in through their Facebook accounts, while many still permit readers to comment anonymously on their websites.

The obvious (and ongoing) issue with anonymous commenting, is it allows individuals to make nasty and harassing comments. In July 2013, a *Philadelphia Magazine* reporter wrote about this very issue, calling the [Philly.com commenters](#) “unbelievably toxic.”

While some Philadelphia residents have not exactly been behaving with “brotherly love” on the internet, on March 7 a local [judge ordered the parent company of Philly.com to reveal the identity of an anonymous person](#) accused of defaming a prominent Philadelphia union leader online.

Judge Jacqueline F. Allen of the Philadelphia County Court of Common Pleas ordered the Philadelphia Media Network (PMN) – which also owns *The Philadelphia Inquirer* and the *Philadelphia Daily News* – to disclose the name of and reveal any other comments made by the anonymous poster.

The anonymous person – who posted under the alias “fbpdplt,” according to Philadelphia’s [CBS affiliate](#) – called John J. Dougherty a “pedophile” in the comments section of an Oct. 2012 article. Dougherty soon after filed suit, and he issued a subpoena to PMN in hopes of revealing “fbpdplt’s” identity.

This is yet another example of both why people cannot automatically assume they will be immune when posting information online under the cloak of anonymity, and that defamed (or allegedly defamed) parties do have legal solutions.

Many 21st century cases have established various standards for compelling disclosure of anonymous posters' identities in the different states. A leading case on this subject is *Dendrite Intern., Inc. v. Doe No. 3*, 342 N.J. Super. 134 (App.Div. 2001). While its holding is not binding nationally, its standard has been cited in a number of jurisdictions and has helped pave the way for judges such as Judge Allen to compel disclosure of the names of offending anonymous posters.

The court in *Dendrite* established a five-part test for lower courts in New Jersey to follow when requests are made to compel disclosure of anonymous posters' identities:

- 1) The plaintiff must attempt to notify the anonymous posters they are the subject of a subpoena for an order of disclosure, and allow them reasonable time to respond;
- 2) The plaintiff must identify the exact statements the anonymous posters made;
- 3) The plaintiff must set forth a prima facie cause of action in the complaint;
- 4) The plaintiff must produce sufficient evidence supporting each element of his or her claim; and
- 5) The court must balance the posters' First Amendment right of anonymous free speech and the strength of the plaintiff's prima facie case, as well as the necessity to disclose the identities.

Thanks to *Dendrite* and cases with similar standards, we have been able to successfully assist clients in identifying anonymous posters and commenters on various websites, such as Yelp, Craigslist and Pissed Consumer.

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