

Jones Day Attorneys File Sex Discrimination Suit but Cannot Remain Anonymous

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On May 3, 2019, in the Federal District Court for the District of Columbia, a group of former female associates of the large law firm Jones Day brought a \$200 million nationwide class action lawsuit alleging pervasive sex discrimination at the firm. Over the past few months, the parties have repeatedly argued over whether certain plaintiffs should be allowed to proceed anonymously to protect their careers from the backlash that public litigants too often endure. The litigation, *Tolton v. Jones Day*, has been a case study in why gender inequality in big law and other powerful sectors needs more scrutiny, and how the limits of the justice system create structural barriers that prevent such scrutiny.

Background on the Sex Discrimination Case

The lawsuit was initially brought by six women, with four using pseudonyms. The initial complaint dubbed Jones Day “a fraternity in a perversely literal sense,” and the allegations encompassed many of the all-too-common forms of [discrimination that women face in the workplace](#): less pay and fewer promotion opportunities compared to male colleagues; unwanted sexual attention, sometimes fueled by alcohol at work events; inappropriate comments about their appearance and behavior from male superiors; careers derailed by maternity leave and childcare obligations; and punishment of women who complain about discriminatory treatment, rather than the male offenders. The four women seeking to proceed anonymously had all been fired or forced out of Jones Day, and requested anonymity to prevent their participation in the lawsuit from hampering their job search and ruining their careers.

When the plaintiffs filed the initial complaint on May 3, 2019, the Court entered an initial order allowing the four women to proceed anonymously. In late May 2019, Jones Day petitioned the court to force the women to reveal their identities, claiming that their anonymity was preventing the firm from investigating their allegations and mounting a legal defense. After the plaintiffs informed the Court that Jones Day was already aware of their identities and had been conducting internal investigations into their allegations, the Court issued an order on May 30 allowing the plaintiffs to maintain their anonymity, but requiring them to produce additional evidence to demonstrate a need to remain anonymous as the case progressed.

In June 2019, three of the women decided to drop the pseudonyms and proceed publicly, while a fourth woman – Jane Doe 4 – asked the Court for three additional months of anonymity. Jane Doe 4 alleged that she was denied promotion to partner on the basis of sex, and detailed sexual harassment from a male partner and retaliation she faced after complaining about a job applicant who wrote “a graphic hypersexualized blog post” about her. On June 17, 2019, Jane Doe 4 filed a heavily redacted motion arguing that she faced imminent risk to her reputation and career, as well as stigma and resulting psychological harm by the disclosure of highly sensitive personal information, if her participation in the lawsuit were publicly disclosed. Calling her situation “analogous to that of a whistleblower,” Jane Doe 4 argued that she had a concrete fear of retaliation from Jones Day and

others in the industry if her identity were to become known. She argued the need to avoid such severe and imminent harm outweighed Jones Day's and the public's interest in the public disclosure of her identity.

Court Denies Request for Plaintiff to Remain Anonymous

In a sealed order issued on August 7, 2019, the Court denied Jane Doe 4's motion to proceed anonymously and ordered the plaintiffs to file an amended complaint disclosing her identity. On August 13, 2019, the plaintiffs filed an amended complaint. Rather than disclose Jane Doe 4's identity, the complaint removed Jane Doe 4 as a named plaintiff, although the plaintiffs' attorneys say she remains a member of the proposed class.

Balancing the Competing Interests of Judicial Transparency and Protection from Retaliation

Jane Doe 4's decision to step back from the lawsuit rather than risk the retaliation and stigma that would come from disclosing her identity speaks volumes about the structural challenges that allow discrimination and wrongdoing to persist in some of our country's most powerful and influential business sectors. In order to stop the abhorrent misconduct that too often occurs in the office, victims and bystanders need to speak up and demand change. The law recognizes the value that such bravery brings to society by prohibiting employers – both past and future – from retaliating against those who oppose discrimination. But the prohibition against retaliation does not guarantee that it does not occur; the [EEOC receives more retaliation charges](#) than any other category of discrimination, and although victims of retaliation may receive some compensation after the fact, the law obviously does not always work to prevent retaliation in the first instance. Thus, many people understandably stay quiet in order to avoid the real threat of career-ending backlash. The [#MeToo movement](#) highlighted that fear of retaliation was the principal reason victims of sexual assault and harassment do not report their employers' abuse. Our nation's courts have a long and valuable tradition of ensuring public access to legal proceedings and documents, as such transparency can help promote the integrity of the legal system, and vindicates constitutionally guaranteed freedoms of speech and access to certain government proceedings. Yet when the requirement of public exposure silences whistleblowers and allows private abuses to persist, the public interest suffers.

As courts continue to face requests for whistleblowers to proceed with litigation anonymously as a [protection against retaliation](#), they will have to reevaluate the best way to balance the competing public interests at stake. When plaintiffs identify a concrete and substantial danger they may face if forced to expose their role in shining a light on discrimination or corruption, courts will hopefully fashion creative ways to protect their identities while they proceed with litigation. Otherwise, many people like Jane Doe 4 will remain silent, and egregious misconduct that harms people throughout the country will stay in the dark.

This blog was subsequently published in [Law360](#).