

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT  
CIVIL DIVISION  
Court File No. C4-04-12239

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Clifford L. Whitaker and Michael V. Mucci,  
on behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

**ORDER DENYING MOTION  
FOR PROTECTIVE ORDER**

3M Company,

Defendant.

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The above-entitled matter came on for a hearing before the Honorable Teresa R. Warner, District Court Judge, 1070 Ramsey County Courthouse, 15 W. Kellogg Blvd., St. Paul, Minnesota, 55102, on July 12, 2005, on Plaintiffs' Notice of Motion and Motion for a protective order preserving the anonymity of five individuals.

Susan M. Coler, Esq., Sprenger & Lang, P.L.L.C., 310 Fourth Avenue South, Suite 600, Minneapolis, Minnesota, 55415, and Thomas J. Henderson, Esq., Sprenger & Lang, P.L.L.C., 1614 Twentieth Street N.W., Washington, D.C., 20009, appeared representing the Plaintiffs.

Thomas W. Tinkham, Esq., Douglas R. Christensen, Esq., and Holly S. A. Eng, Esq., Dorsey & Whitney, L.L.P., 50 South Sixth Street, Suite 1500, Minneapolis, Minnesota, 55402-1498, appeared representing the Defendant.

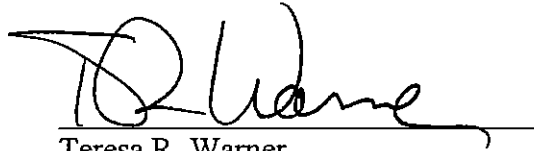
Based upon the entire file, record and proceedings herein, the arguments of counsel and the written memoranda submitted on this issue, the Court makes the following:

**ORDER**

1. That Plaintiffs' motion for a protective order preserving the anonymity of certain clients is **DENIED**;
2. That the attached Memorandum is incorporated herein and constitutes the Court's findings of fact, as required by Minnesota Rule of Civil Procedure 52.01;
3. There being no just reason for delay, let judgment be entered accordingly.

Date: September 16, 2005

By the Court:

A handwritten signature in black ink, appearing to read "T. Warner", written over a horizontal line.

Teresa R. Warner  
District Court Judge

## MEMORANDUM

In this motion, Plaintiffs seek a protective order preserving the anonymity of five persons who sought legal advice from class counsel about participation in the case, but then declined further active involvement and sought anonymity based on fear that disclosure of their identities may make them a target for retaliation. In seeking a protective order for these five individuals, Plaintiffs rely on Minnesota Rule of Professional Conduct 1.6 (a)(1), which provides that, except when certain specific exceptions apply, a lawyer “shall not knowingly reveal a confidence or secret of a client...” The Plaintiffs also rely on Minnesota Rule of Civil Procedure 26.03, which provides that:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or, alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the discovery not be had;...

Plaintiffs state that the five individuals for whom the protective order is sought withdrew from communications with class counsel and declined any active involvement in this lawsuit based on a stated fear of adverse consequences or retaliation by 3M.

There is no Minnesota court that has ruled on the question of whether a client’s identity falls within the confidences and secrets under Rule 1.6 of the Minnesota Rules of Professional Conduct. Plaintiffs cite a number of decisions from other jurisdictions where the disclosure of a client’s identity was held to be within the scope of Rule 1.6 protections. Plaintiffs also argue that under Minnesota Rule of Civil Procedure 26.03, good cause has been shown that this discovery “not be had.” Plaintiffs argue that there are three primary reasons for anonymity outweighing 3M’s interest in seeking this discovery. 1) Plaintiffs argue that revealing the names of these individuals would impinge on their privacy interests; 2) that these five individuals withdrew from any involvement in this lawsuit because of fear of retaliation from 3M; and 3) revealing the

identity of these five individuals will have a “chilling effect” on the ability of potential class members to get information.

This Court is satisfied that the Plaintiffs have failed to show good cause for the issuance of the protective order. 3M’s argument is that the disclosure of these five individuals will lead to the discovery of admissible evidence and will also help 3M to not engage in improper communications and violate protected, confidential and privileged communications.

On its web site, counsel for Plaintiffs and prospective plaintiffs disclosed that identities likely will not remain confidential. There is also a disclaimer on the web site indicating that Sprenger & Lang will keep the substance of the information provided confidential, but does not provide confidentiality regarding the individual’s identity. The Plaintiffs have disclosed over 450 names and have not sufficiently explained why these five individuals’ identity should be withheld.

The Plaintiffs have cited a number of cases to support their proposition that they should be protected from divulging the identity of these “secret clients” in response to 3M’s discovery request. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984), *Brennan v. Engineered Prods., Inc.*, 506 F.2d 299 (8<sup>th</sup> Cir. 1974) and *Donovan v. First Federal Sav. & Loan Ass’n*, 1982 U.S. Dist. LEXIS 12789, \*3 (S.D. Iowa Mar. 31, 1982). Those cases are different from the scenario presented in this present litigation. There is nothing in the record to support the concern for retaliatory conduct by 3M. Plaintiffs have not demonstrated that there is good cause for the issuance of a protective order sufficient to overcome Defendant’s entitlement to discovery of the identities of these individuals. For these reasons, no protective order will issue.

TRW