

Justice Ginsburg Denies Request to Block Release of Digital Media and Data Privacy Law Blog

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Last week, as reported by the Reporters Committee for Freedom of the Press, Justice Ruth Bader Ginsburg denied a request to stay an order of the Connecticut Supreme Court ordering the disclosure of more than 12,000 documents filed in 23 now-settled lawsuits involving allegations of sexual abuse by Roman Catholic priests.

The emergency request for stay to the U.S. Supreme Court followed the Connecticut Supreme Court's decision in *Rosado v. Bridgeport Roman Catholic Diocesan Corp.* in June 2009. In *Rosado*, the defendants (the diocese and certain individual clergy members) appealed certain trial court orders to unseal documents previously filed under seal with the court in 23 lawsuits that were settled and withdrawn in 2001. Reviewing the trial court's orders, the Connecticut Supreme Court held that all but a handful of the 12,675 pages of documents filed were "judicial documents" to which a presumption of public openness applied. The Connecticut Supreme Court further held that the trial judge had properly unsealed all but a few of the documents (the trial court had apparently unsealed all documents in the docket, but the supreme court reversed the trial court with respect to 15 documents).

At issue in *Rosado* was the application of a Connecticut rule of practice providing "[e]xcept as otherwise provided by law, there shall be a presumption that documents filed with the court shall be available to the public." The critical question—an issue of first impression for the court—was what constituted a document subject to the presumption of public access.

To resolve the matter, the Connecticut Supreme Court first looked to common-law approaches to presumed access to court documents. Ultimately, the court determined that the state rule of practice codified the "common-law presumption . . . that the language 'filed with the court' signifies judicial documents"—that is, the court held that the presumption of openness in the rule of practice applies only to "judicial documents." A "judicial document," the court held, means "any document filed that a court reasonably may rely on in support of its adjudicatory function."

With regard to pretrial discovery motions, the Connecticut Supreme Court wrote:

Justice Ginsburg Denies Request to Block Release of Judicial Documents in Connecticut

Because of their impact on the judicial process, the public interest in judicial monitoring extends to such [discovery] motions. The actions of the court during the pretrial period ultimately shape issues between the parties at trial or settlement, and the public surely has a vested interest in ensuring that those actions are carried out equitably, free from corruption or error. The vindication of this interest supports public access, not only to the proceedings themselves, but to any materials upon which a court may rely in reaching a decision. Accordingly, we hold that judicial documents are those filed with a court upon which the court reasonably could rely in the performance of its adjudicatory function, including discovery related motions and their associated exhibits.

In *Rosado*, the court held that all dispositive and non-dispositive motions filed in the case, including discovery motions, and their attached exhibits—regardless of whether the motions were granted or denied—were “judicial documents” subject to presumed access. All but 15 documents in the docket were ordered unsealed.

The Connecticut lawsuits underlying *Rosado* represent a few of the many lawsuits filed in recent years alleging abuse by the clergy. Private settlements were reached in many cases in Connecticut, Massachusetts, and other states— for example, in 2002, the Boston Archdiocese reportedly agreed to pay \$10 million to settle 86 claims filed against a single priest.

The Connecticut Supreme Court’s order unsealing judicial documents in the *Rosado* case will likely result in public disclosure of previously hidden details of the 23 settled Connecticut cases. According to press reports, following Justice Ginsburg’s denial of their request for an emergency stay, the *Rosado* defendants have announced their plan to ask the full U.S. Supreme Court to review the case.