

Chicago Daily Law Bulletin®

Volume 162, No. 135

Serving Chicago's legal community for 161 years

Magistrate orders bloggers to reveal confidential sources

BY PATRICIA MANSON
Law Bulletin staff writer

Two associate professors who publish a blog critical of Chicago State University's administration have been ordered to reveal the names of their confidential sources.

In a written opinion last week, U.S. Magistrate Judge Sheila M. Finnegan directed Phillip Beverly and Robert Bionaz to disclose the identities of individuals who provided them with information they contend they could not publish for fear those individuals would become the target of retaliation.

Finnegan conceded Beverly and Bionaz allege in a lawsuit that university officials violated their — not their sources' — right to free speech by attempting to shut down CSU Faculty Voice.

But the contention that fear of retaliation against others caused Beverly and Bionaz to censor themselves "presumes the existence of confidential sources" the men wanted to protect, Finnegan wrote.

And accepting the existence of these sources, she continued, would amount to simply accepting Beverly and Bionaz's word that their exercise of their First Amendment rights has been chilled.

That's not how discovery in a civil case works, she wrote.

She wrote it is up to Beverly and Bionaz — not university officials — to prove that their constitutional rights were violated.

"Plaintiffs cannot take the stand at trial and testify that a handful of fellow CSU employees provided confidential information on multiple occasions that they felt obliged to withhold out of fear of reprisal," Finnegan wrote Thursday, "while at the same time refusing to provide any details that would allow defendants to obtain discovery or cross-examine them about these contentions."

She granted a motion to compel Beverly and Bionaz to answer questions about their sources.

Beverly and Bionaz helped found CSU Faculty Voice, a blog whose stated goal is to expose corruption and mismanagement at the university.

In a suit filed in 2014, the men maintain three current or former university officials cited alleged violations of the school's computer-usage and cyberbullying policies to try to shut down the blog.

The suit seeks a declaration that the policies are unconstitutional and an injunction barring the defendants from censoring Beverly and Bionaz's speech. It

also seeks monetary damages.

Defendants are now-former university president Wayne D. Watson, Associate General Counsel Janelle M. Carter and Patrick B. Cage, general counsel and vice president of labor and legal affairs.

U.S. District Judge Joan B. Gottschall referred the case to Finnegan to supervise discovery.

In their depositions, Beverly and Bionaz testified several individuals gave them information that could not be verified by other sources and could not be published without revealing the identity of the original source.

Beverly and Bionaz's counsel asserted a qualified reporter's privilege when the men were asked for the names of these sources.

In her opinion, Finnegan rejected the argument that such a privilege allows Beverly and Bionaz to withhold the names.

The 7th U.S. Circuit Court of Appeals has held there is no qualified reporter's privilege, Finnegan wrote, citing *McKevitt v. Pallasch*, 339 F.3d 530 (7th Cir. 2003).

And quoting Federal Rule of Civil Procedure 26, she wrote discovery may be obtained about a matter that is not privileged if it is "relevant to any party's claim or

defense."

The names of Beverly and Bionaz's sources are relevant to university officials, Finnegan wrote.

"Only plaintiffs know of the sources' identities," she wrote, "and defendants cannot discover facts about the alleged chilling, including whether it actually occurred, without also knowing that information."

Attorneys for Beverly and Bionaz include Jessica Tovrov of Goodman, Tovrov, Hardy & Johnson LLC and Robert Corn-Revere of Davis, Wright, Tremaine LLP in Washington, D.C.

Corn-Revere declined to comment because the case is pending.

The lead attorney for the university officials named as defendants is Donald J. Mizerk of Husch, Blackwell LLP.

The officials also are represented by the firm's Lisa J. Parker Freeman, who practices law under the name Lisa Parker.

"The defendants agree with Judge Finnegan's order," Parker said. "Her opinion is detailed, well-reasoned and aligns with the law of the circuit, which does not recognize a reporter's privilege."

The case is *Phillip Beverly, et al. v. Wayne D. Watson, et al.*, No. 14 C 4970.