

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

HANH NGUYEN ALLGOOD,)	
)	
Plaintiff,)	
)	Case Number 2:09-cv-00557(MSD/JEB)
v.)	
)	
WILLIAMS MULLEN, P.C.,)	
)	
Defendant.)	

**MEMORANDUM IN SUPPORT OF DEFENDANT’S EMERGENCY MOTION TO
IMPOSE PROTECTIVE ORDER**

NOW COMES the Defendant, Williams Mullen, P.C., by counsel, and for its Memorandum in Support of its Emergency Motion to Impose Protective Order, states as follows:

FACTUAL BACKGROUND

On December 2, 2009, James V. Meath, an attorney and one of the managing partners at Williams Mullen, P.C., met with Ardra M. O’Neal, the Plaintiff’s counsel, at Ms. O’Neal’s office in Washington, D.C. to discuss whether or not it would be possible to settle this case. On January 27, 2010, Style magazine, a Richmond news, arts, culture and opinion publication, published an article which quoted and attributed statements to Plaintiff’s counsel concerning the fact that she met with Mr. Meath to discuss settlement of the case. In addition, the article contains Ms. O’Neal’s views of the settlement discussions, which are not accurate in every instance. A copy of the January 27, 2010 Style article is attached hereto marked **Exhibit A** and incorporated herein by reference.

This is not the first time this case has received media attention. On November 4, 2009, Ms. O’Neal filed the Complaint in the Alexandria Division of this Court, although it was a

Norfolk case. She then waited 21 days before she served the Complaint. During this 21-day delay in serving the case, on November 10, 2009, Style published an article concerning the case. Moreover, a radio “shock jock” in Washington, D.C. featured certain of the allegations in the case on a morning radio show broadcast in the greater Washington, D.C. metropolitan area.¹

As set forth more particularly in Defendant’s Motion to Dismiss and Motion to Strike, the Complaint contains numerous allegations which are well outside of the statute of limitations applicable to this case and also which were not raised in the Plaintiff’s Complaint before the EEOC and, therefore, cannot be raised in this lawsuit. It is obvious that Plaintiff’s counsel, who specializes in labor and employment matters, is well aware of the fact that these salacious allegations cannot move forward in Court. However, she is also well aware that such allegations would attract the media and it is fair to infer that she included them in the Complaint for that very reason.

ARGUMENT

Plaintiff’s counsel’s first wave of attack was to include in the Complaint allegations which are either barred by the statute of limitations or are barred by the fact that they were not raised in Plaintiff’s Complaint to the EEOC simply to generate media attention. As a second wave of attack, Plaintiff’s counsel revealed to Style that the parties had engaged in settlement discussions and Plaintiff’s counsel’s view of certain aspects of those discussions (with which the Defendant does not agree). This second wave of attack presents the substantial danger of prejudicing the Defendant from having a fair and impartial jury impaneled in this case. It is one thing for an attorney to discuss in the media allegations which have yet to be proven in Court.

¹ The November 10, 2009 Style article does not quote or attribute any statements to Ms. O’Neal and the Defendant is not aware that the radio show did either. However, the circumstances surrounding these events, i.e., the Style article and the radio show shortly after the case was filed and prior to it being served, raises the question of how the media became aware of this lawsuit.

While those statements have the potential of being prejudicial to the opposing party at trial, a jury will listen to the facts which are presented in Court and make its decision in accordance with those facts and the law presented in the Court's jury instructions. However, when an attorney reveals to the media prior to a jury trial that settlement discussions have occurred and states, although inaccurately in part in this instance, details of the discussions, the likelihood of prejudicing a potential jury is greatly increased.

The Defendant concedes that most protective orders such as the one being sought here have been issued in criminal cases. However, the reasons to issue a protective order should be no different for a civil case, particularly where highly prejudicial matters such as settlement discussions, which cannot be introduced into evidence, are broadcast to the media by an attorney for a party in litigation.

The United States Court of Appeals for the Fourth Circuit, in a criminal case, has held that, to impose a gag order, a Court must determine that there is a "reasonable likelihood that the defendants would be denied a fair trial without proscribing certain (parties/witnesses) extra judicial statements." *In re Russell*, 726 F.2d 1007, 1010 (4th Cir. 1984). "The Court is to consider 'the probable nature of the publicity' and determine how that publicity may impact prospective jurors. *Id.*, 726 F.2d at 1011. Here, it is clear that Plaintiff's counsel is trying her case in the media and there is a reasonable likelihood that her statements, particularly regarding the settlement discussions, will prejudice the Defendant in having the Court impanel a fair and impartial jury. The only way to prevent this prejudice to the Defendant's right to have a fair and impartial jury hear this case is for this Court to order the Plaintiff's counsel, and the Plaintiff, to have no further direct or indirect communications with any form of media during the pendency of this case.

