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IN THE SUPREME COURT OF CALIFORNIA

WILLIAM H. COSBY, JR.,
Petitioner,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES,
Respondent,

JUDY HUTH,
Real Party in Interest.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION THREE
CASE NO. B263799

PETITION FOR REVIEW

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ISSUES PRESENTED

In an effort to balance the interests of both victims of childhood sexual abuse who did not recognize the damage caused to them until years later and defendants accused of long-ago abuse that would otherwise be barred by the statute of limitations and might be false, the Legislature enacted Code of Civil Procedure section 340.1. Section 340.1 requires that a person more than 26 years of age who wishes to file a complaint alleging childhood sexual abuse must file certificates of merit from an attorney and a mental health practitioner attesting to the merits of the claim. Until

the trial court makes a finding that there is potential merit to the claim, the defendant cannot be publicly named in the complaint or be served with the complaint. Despite the important role these certificates play in balancing the rights of plaintiff and defendant, there is no published authority on the following two fundamental questions that were presented below in a writ petition that was summarily denied:

1. Are certificates of merit adequate if they assert in conclusory terms that the claim has merit, or must they also identify the specific facts that support the claims?

2. Can certificates of merit be amended after the 60-day deadline to file the certificates has expired, and after the statute of limitations on a plaintiff's claim has run?

INTRODUCTION
WHY REVIEW SHOULD BE GRANTED

In 1990, the Legislature amended Code of Civil Procedure section 340.1[1] to permit certain actions alleging childhood sexual abuse to be filed long after the alleged abuse occurred. At the same time, the Legislature enacted a series of procedural protections designed to safeguard defendants from frivolous claims and to ensure a defendant's privacy is protected while the trial court decides whether the action may proceed. Those protections included a requirement that, in conjunction with the complaint, the plaintiff

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

must file under seal two certificates of merit—one from an attorney and one from a mental health practitioner—setting forth the facts that support the claim and explaining why the claim is "reasonable and meritorious." (§ 340.1, subd. (h)(1); also § 340.1, subd. (h)(2).) The certificates of merit must be filed under seal and are reviewed by the court in camera. (§ 340.1, subd. (j).)

Certificates of merit are critical to initiating claims for childhood sexual abuse. Yet no published opinion (or unpublished opinion, for that matter) has addressed the required content of the certificates, or explained whether inadequate certificates of merit may be amended. This may be due to the fact that certificates of merit are supposed to be filed under seal and reviewed in camera, and their validity therefore will often be moot by the time judgment is entered in the usual case.

This is an unusual case because the attorney representing plaintiff Judy Huth in the trial court ignored the requirements of section 340.1 by publicly naming Mr. Cosby in the complaint and publicly filing the certificates of merit. The trial court concluded the certificates were inadequate but allowed Ms. Huth's attorney to file supplemental certificates under seal. The court thereafter ruled that its "in camera review of the certificates of merit filed in this matter (and supplemental declarations relating thereto)" demonstrated that "there is reasonable and meritorious cause for the filing of this action against Defendant." (PWM, vol. 2, exh. 19, p. 261.) Mr. Cosby sought writ relief from this ruling and from the prior ruling allowing Ms. Huth to file supplemental declarations. The Court of Appeal summarily denied that request.

The unusual procedural background of this case, in which the certificates of merit were publicly filed and are part of the record, offers the Court a rare opportunity to review and comment on the required contents of the certificates of merit, or transfer the matter back to the Court of Appeal so that it may do so. Certificates of merit are the pivotal documents used to initiate sexual abuse claims when an adult wishes to assert such a claim long after the alleged abuse has occurred. The certificates filed in this case were woefully inadequate because they failed to describe any of the facts supporting Ms. Huth's claim. Based on the certificates, the court should have sua sponte dismissed plaintiff's case. Instead, the trial court ordered plaintiff to file supplemental certificates of merit after the 60-day deadline to file the certificates had expired, and after the statute of limitations on plaintiff's claim had also expired.

By allowing plaintiff to supplement the defective certificates of merit, the court deprived Mr. Cosby of one of the statute's most important protections. As the Court of Appeal held in *Jackson v. Doe* (2011) 192 Cal.App.4th 742, 752 (*Jackson*) when it rejected the argument that a pro per plaintiff should be excused from being required to file certificates of merit, allowing that exception would "create a cavernous loophole in the statute, a loophole that would defeat its salutary goal." The trial court in this case created an equally large loophole in section 340.1 by disregarding the statute's procedural requirements and allowing the plaintiff to file supplemental certificates of merit after the limitations period on her claim had run. Review is warranted to provide much needed guidance to the lower courts on both the procedural and substantive

requirements of certificates of merit, and to ensure they serve their goal of protecting defendants from untimely and unsupported claims.

STATEMENT OF THE CASE

A. In violation of section 340.1, Judy Huth publicly identifies Bill Cosby as the defendant in a complaint alleging childhood sexual abuse.

On December 2, 2014, Judy Huth filed a complaint against William Henry Cosby, Jr. alleging causes of action for sexual battery, intentional infliction of emotional distress, and negligent infliction of emotional distress, all stemming from an incident that allegedly occurred in 1974 when plaintiff was 15 years old. (PWM, vol. 1, exh. 1, pp. 9-12.) Section 340.1, subdivision (m) provides that, if a complaint alleges childhood sexual abuse, "no defendant may be named except by 'Doe' designation . . . ." Ms. Huth's complaint cited section 340.1, but her counsel ignored the requirements of the statute and identified Mr. Cosby by name throughout the pleading. (PWM, vol. 1, exh. 1.) Also in contravention of the statute, the complaint was not accompanied by a certificate of merit "setting forth the facts which support the declaration . . . ." (PWM, vol. 1, exh. 10, p. 120:16-17; § 340.1, subd. (h).) Less than an hour after plaintiff filed her complaint, an article about the case appeared on TMZ.com. (PWM, vol. 1, exh. 10, pp. 123:23-28, 134-135.) Subsequently, more than 4,200 news articles about Ms. Huth's

claims were posted or published for the world to see. (PWM, vol. 1, exh. 10, p. 120:27-28.)

B. Mr. Cosby moves to dismiss plaintiff's suit.

On December 4, 2014, Mr. Cosby filed a motion to dismiss Ms. Huth's suit as a sanction for her counsel's violations of section 340.1. (PWM, vol. 1, exh. 3.) The motion argued that Ms. Huth's attorney knowingly violated section 340.1 by publicly naming Mr. Cosby in the complaint, failing to consult with and obtain the required certificate of merit from a mental health practitioner before filing suit, and knowingly filing a complaint that was barred by the statute of limitations, as evidenced by the fact that Ms. Huth 10 years previously had attempted to sell the same story that was the basis for her suit to a tabloid. (*Ibid.*) On the same date, Mr. Cosby filed a demurrer that was premised on similar grounds. (PWM, vol. 1, exh. 2.)

C. Ms. Huth amends her complaint by substituting "Doe 1" in place of "Cosby," but again violates section 340.1 by publicly filing her certificates of merit.

On December 4, 2014, the same date that Mr. Cosby filed his sanctions motion and demurrer, Ms. Huth filed a First Amended Complaint identical to her original complaint, except that it substituted the name "Doe 1" in place of Mr. Cosby's name. (PWM, vol. 1, exh. 4.) After taking this belated step to hide Mr. Cosby's

identity—futile given the wide publicity her complaint had already generated—she again ignored section 340.1's prohibition against publicizing the name of the defendant by participating in a widely publicized press conference to promote her claims against Mr. Cosby. (PWM, vol. 1, exh. 10, p. 125:10-12.)

Ten days after filing her complaint, Ms. Huth filed two certificates of merit, one by her trial attorney and one by a clinical psychologist. (PWM, vol. 1, exhs. 5-7.) Section 340.1, subdivision (j) requires that certificates of merit be submitted for in camera review. Ms. Huth's attorney filed the certificates publicly. (*Ibid.*) To explain why the certificates had not been filed with the complaint, counsel filed a declaration that invoked section 340.1, subdivision (h)(3), which grants a 60-day grace period to file certificates of merit in cases where the three-year statute of limitations is about to run. (PWM, vol. 1, exh. 6.) In his declaration, Ms. Huth's attorney stated that he could not file certificates of merit at the time he filed the complaint "because a statute of limitations would impair the action," the certificates of merit "could not be obtained before the impairment of the action," and "I was concerned that any delay . . . would impair the action due to the potential of a limitations period expiring." (PWM, vol. 1, exh. 6, pp. 62-63.)

D. Mr. Cosby files a second demurrer and a second sanctions motion challenging the amended complaint.

After Ms. Huth filed her amended complaint, Mr. Cosby filed a second demurrer. Citing section 340.1, subdivision (l), which provides that "[t]he failure to file certificates [of merit] in accordance with this section shall be grounds for a demurer . . . ." (PWM, vol. 1, exh. 9, p. 87), Mr. Cosby argued, among other things, that his demurrer should be sustained because plaintiff filed her certificates of merit publicly. (PWM, vol. 1, exh. 9, pp. 94-96.) In addition, on the face of the complaint, it was evident that the statute of limitations on plaintiff's claims had already run. (PWM, vol. 1, exh. 9, pp. 96-97.)

Mr. Cosby also renewed his sanctions motion. Expanding on the arguments in the original motion, he argued Ms. Huth and her counsel should be sanctioned because they identified Mr. Cosby by name in her original complaint (PWM, vol. 1, exh. 10, p. 111:1-3); they served the amended pleadings without leave of court (PWM, vol. 1, exh. 10, p. 106:13); they publicly filed the certificates of merit (PWM, vol. 1, exh. 10, p. 106:13-14); and plaintiff attempted to sell her story to the press 10 years before filing her complaint, which made it clear her complaint was untimely (PWM, vol. 1, exh. 10, pp. 113:27-114:2). Because plaintiff's "egregious conduct depriving Mr. Cosby of the statute's protections . . . cannot be undone," the motion concluded that "[o]nly terminating sanctions can appropriately remedy what has occurred . . . ." (PWM, vol. 1, exh. 10, p. 116:14-16.)

E. Ms. Huth seeks leave to substitute Mr. Cosby in place of "Doe 1."

Section 340.1, subdivision (n) provides that, after a suit has been filed against a "Doe" defendant, the plaintiff may submit under seal a "certificate of corroborative facts" seeking leave to amend the complaint and substitute the true name of the defendant for the "Doe" designation. Ms. Huth had already identified Mr. Cosby in her original complaint, leaked her claims to the media, and publicized her allegations in a press conference. Nevertheless, on December 19, 2014, faced with a sanctions motion, she filed an "Application For Permission To Amend First Amended Complaint To Substitute Name Of Defendant Pursuant To Code Of Civil Procedure §340.1(n), And To File A Certificate Of Corroborative Fact in Support Thereof Under Seal Pursuant To Code Of Civil Procedure §340.1(p)." (PWM, vol. 1, exh. 8.)

F. The court denies Mr. Cosby's request to expedite the hearing on his sanctions motion and orders Ms. Huth to supplement her certificates of merit.

Mr. Cosby's sanction motion, if granted, would have resulted in the dismissal of Ms. Huth's claim. For that reason, in February 2015, Mr. Cosby filed an ex parte application asking the court to expedite the hearing on that motion, or defer ruling on the sufficiency of Ms. Huth's certificates of merit and certificate of corroborative facts until after the court ruled on the motion. (PWM,

vol. 2, exh. 12.) Mr. Cosby explained that a hearing date on the sanctions motion could not be scheduled until October 7, 2015, "the first available date on the Court's calendar." (PWM, vol. 2, exh. 12, p. 169:1-2.) Because plaintiff and her counsel had irreparably harmed Mr. Cosby by publicizing her groundless allegations, the interests of justice called for the sanctions motion to be heard quickly.

The court denied Mr. Cosby's ex parte motion on the ground that docket conditions would not permit the court to hear Mr. Cosby's motion any earlier than the noticed hearing date. (PWM, vol. 2, exh. 27.) However, the court indicated that it likely would hear Mr. Cosby's motion for sanctions at the same time it heard Ms. Huth's motion to proceed with her lawsuit against Mr. Cosby and to identify him in the pleadings. (*Ibid.*) Following the hearing, the court issued a minute order that stated it was taking the matter under submission. (PWM, vol. 2, exh. 13.)

At a subsequent case management conference, plaintiff's counsel inquired whether the court planned to rule on the sufficiency of plaintiff's certificates of merit. (PWM, vol. 2, exh. 27.) Mr. Cosby's counsel reminded the court that he had requested that the court first rule on his sanctions motion. (*Ibid.*) The court looked over plaintiff's certificates of merit, said they were insufficient to justify Ms. Huth's claims against Mr. Cosby, and suggested that plaintiff's counsel file supplemental declarations. Mr. Cosby's counsel objected that supplemental declarations would be prejudicial and untimely. Plaintiff's counsel also expressed concern that permitting supplemental declarations might be reversible

error. The court said it would reexamine the certificates in camera. (*Ibid.*; see also PWM, vol. 2, exh. 15.)

After subsequently reviewing the documents in camera, the court ordered that "[p]laintiff shall file supplemental declarations from (1) Dr. Anthony E. Reading and (2) counsel of record, Marc S. Strecker, setting forth in greater detail the facts which support their previously filed declarations under CCP § 340.1(h)(1) and (2)." The court ordered the supplemental declarations to be filed on or before March 31, 2015. (PWM, vol. 2, exh. 17, p. 249.) On March 30, 2015, four months after filing the complaint, Ms. Huth filed the two supplemental declarations. (PWM, vol. 2, exh. 18.)

G. The court rules that the certificates of merit and certificate of corroborative facts are adequate and that plaintiff may pursue her claims.

On April 9, 2015, the court issued a minute order stating that it had conducted "an in camera review of the certificates of merit filed in this matter (and supplemental declarations relating thereto). Based solely thereon, the court finds there is reasonable and meritorious cause for the filing of this action against Defendant." (PWM, vol. 2, exh. 19, p. 261.) The court also conducted an in camera review of the certificate of corroborative facts and "[b]ased solely thereon, the Court finds one or more facts has been shown to be corroborative of one or more of the charging allegations against Defendant. The Court orders the complaint may be amended, prior to service, to substitute the true and correct name of

Defendant." (*Ibid.*) Ms. Huth thereafter filed a Second Amended Complaint that once again identified Mr. Cosby by name. (PWM, vol. 2, exh. 25.)[2] She also served discovery demands and noticed Mr. Cosby's deposition. (PWM, vol. 2, exhs. 20-24.)

H. The Court of Appeal summarily denies Mr. Cosby's request for writ relief.

On May 4, 2015, Mr. Cosby filed a petition for writ of mandate, prohibition, or other appropriate relief, asking the Court of Appeal to overturn the trial court's decision that allowed plaintiff to supplement her certificates of merit after the deadline to file the certificates had expired. The petition asked the Court of Appeal to direct the trial court to enter a new order dismissing plaintiff's claims based on the inadequacy of her original certificates of merit. On May 15, plaintiff filed a preliminary opposition, and on May 26, Mr. Cosby filed a reply. On May 28, the Court of Appeal summarily denied the petition.

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[2] On June 1, 2015, Mr. Cosby filed a demurrer to the Second Amended Complaint.

LEGAL ARGUMENT

REVIEW SHOULD BE GRANTED TO PROVIDE LONG OVERDUE GUIDANCE TO LOWER COURTS AND LITIGANTS ABOUT THE REQUIRED CONTENT OF CERTIFICATES OF MERIT AND THE DEADLINE BY WHICH THEY MUST BE FILED.

A. To deter frivolous claims based on decades-old allegations of childhood sexual abuse, the Legislature requires that plaintiffs file certificates of merit by the statutory deadline.

In 1986, the Legislature enacted section 340.1, which established a three-year statute of limitations period for claims of sexual abuse against a child under the age of 14 where the abuse was committed by a member of the child's household or family. (Stats. 1986, ch. 914, § 1, pp. 3165-3166; *Lent v. Doe* (1995) 40 Cal.App.4th 1177, 1182.)

In 1990, the Legislature amended section 340.1 to apply to all civil causes of action arising from childhood sexual abuse—not just those involving household or family members. At the same time, the Legislature extended the limitations period to eight years from the date the plaintiff attained the age of majority (i.e., 26 years of age), or three years from the date the plaintiff discovered, or reasonably should have discovered, that a psychological injury or illness occurring after the age of majority was caused by the sexual abuse,

whichever occurred later. (Stats. 1990, ch. 1578, § 1, p. 7550.) In 1994, the Legislature again amended section 340.1 to make the limitation periods adopted in 1990 apply to "any action otherwise barred by the period of limitations in effect prior to January 1, 1991," thus reviving causes of action that lapsed prior to January 1, 1991. (§ 340.1, subd. (r).) The purpose of the new statute of limitations periods enacted in 1990 and 1994 was "to allow sexual abuse victims a longer time period in which to become aware of their psychological injuries and remain eligible to bring suit against their abusers." (*Debbie Reynolds Prof. Rehearsal Studios v. Superior Court* (1994) 25 Cal.App.4th 222, 232.)

At the same time that it extended the deadline to file claims, the Legislature enacted a series of safeguards to protect defendants from frivolous suits. The 1990 Act provided that, if the plaintiff was more than 26 years old when the complaint was filed, plaintiff's attorney had to sign a certificate of merit stating that he or she had reviewed the facts; consulted with at least one licensed mental health practitioner, who was not a party to the action; and, based on that review and consultation, concluded that the action had reasonable and meritorious cause. (Stats. 1990, ch. 1578 (Sen. Bill No. 108) § 1, currently in section 340.1, subd. (h)(1).) In addition, a mental health practitioner had to file a certificate of merit stating, among other things, that the practitioner had interviewed the plaintiff; knew the relevant facts and issues; and in the practitioner's opinion, there was a reasonable basis to believe that the plaintiff had been abused as a child. (Stats. 1990, ch. 1578 (Sen. Bill No. 108) § 1, currently in section 340.1, subd. (h)(2).) If the

attorney did not have time to consult with a medical practitioner and prepare the certificates of merit before the statute of limitations expired, the attorney was required to file a certificate explaining why. (Stats. 1990, ch. 1578 (Sen. Bill No. 108) § 1, now codified in section 340.1, subd. (h)(3).) The statute provided plaintiff's counsel with a grace period of no more than 60 days from the date the complaint was filed to submit the late certificates of merit. (*Ibid.*) Finally, it provided that the plaintiff could not identify the defendant in the complaint by name until the court reviewed the certificates of merit and found reasonable and meritorious cause for the action. (*Ibid.*; see *Doyle v. Fenster* (1996) 47 Cal.App.4th 1701, 1703-1704 (*Doyle*) [summarizing these requirements].)

Additional protections were added to the statute in 1994. The revised statute provided that the plaintiff could not even *serve* the complaint until the court reviewed and approved the certificates of merit. (Stats. 1994, ch. 288 (Assem. Bill No. 2846) § 1.) Before identifying the defendant by name, the plaintiff's counsel had to file a certificate of corroborative facts declaring that he or she had discovered one or more facts corroborating the charging allegations of the complaint, and setting forth "in clear and concise terms the nature and substance of the corroborative fact." (Stats. 1994, ch. 288 (Assem. Bill No. 2846) § 1, now codified in section 340.1, subd. (n)(1).)

The Legislature enacted these protections in response to concerns that, under the new discovery rule, the statute of limitations could be extended indefinitely, and suits alleging childhood sexual abuse could be filed for improper purposes.

(Motion for Judicial Notice (MJN), vol. 1, exh. A, p. 90 [Aug. 23, 1989 report to the Assembly Judiciary Committee asking whether the bill would "open the door to potential suits brought solely for harassment purposes?"].) By requiring certificates of merit, the Legislature hoped to reduce the possibility that suits would be used solely for harassment, help defendants defend themselves against suits "based on . . . acts [alleged] to have occurred ten, fifteen, twenty or more years in the past," and protect defendants from the "adverse publicity that such allegation stigmatizes upon a defendant even though subsequently found not liable." (MJN, vol. 1, exh. A, pp. 145-146 [Aug. 15, 1990 Assembly Committee on Judiciary Republican Analysis in support of bill; see also MJN, vol. 1, exh. A, p. 131 [bill's author describes the certificate of merit as a "pleading hurdle"]; *Jackson, supra,* 192 Cal.App.4th at p. 752 ["the purpose of the certificates of merit requirements is to impose 'pleading hurdles aimed at reducing frivolous claims' "].)

The 1994 amendments, which prohibit plaintiffs from serving complaints until the court approves the certificates of merit, and which require an additional certificate of corroborative facts before the defendant may be identified by name, were intended to "provide significant added protections to the bill." (MJN, vol. 3, exh. B, p. 528 [Sen. Judiciary Report on Assem. Bill No. 2846 (Author's statement)].) They also were enacted in response to concerns about the reliability of recovered childhood memories (MJN, vol. 3, exh. B, pp. 572 [Report for Senate Committee on Judiciary notes that "[t]he concept of 'repressed memory' . . . has sparked tremendous debate"],

587-588, 589 [prohibition against naming defendant was a response to concerns about false implanted memories].)

As this legislative history demonstrates, certificates of merit play an important role in protecting defendants from frivolous claims of childhood sexual abuse based on faulty or false memories, and from plaintiffs acting with improper motives. To ensure meritless claims are dismissed promptly, the certificates must be filed with the complaint, and if that proves impossible, within a 60-day grace period. If 60 days pass without proper certificates being filed, the action must be dismissed. (§ 340.1, subd. (h)(3).)

B. No court has ever defined the required content of certificates of merit. This case presents an unusual opportunity to do so.

In the more than 22 years since the Legislature mandated that plaintiffs file certificates of merit as a condition precedent to pursuing claims for childhood sexual abuse, no published (or even unpublished) opinions explain what the documents must say. That is not surprising. When certificates of merit are filed under seal and reviewed in camera, as the statute requires, the question whether they were adequate generally will be moot by the time there is a judgment and the case is on appeal. This case is unusual because the certificates of merit were not filed under seal and are part of the appellate record. The case therefore provides an opportunity for the Court to review the certificates and explain why they either do, or do not, satisfy the statutory standard. If they do not, then the plaintiff's action should not be allowed to proceed. (§ 340.1, subd. (l)

["The failure to file certificates in accordance with this section shall be grounds for a demurrer"].)

The analysis of what the certificates should say begins with the language of the statute. Section 340.1, subdivision (h) provides that "[c]ertificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff." The attorney's certificate must provide that the attorney has

> reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action.

(§ 340.1, subd. (h)(1).)

The mental health practitioner's certificate must state that the practitioner

> is licensed to practice and practices in this state and is not a party to the action, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(§ 340.1, subd. (h)(2).)

Section 340.1, subdivision (h)(1) describes the conclusions the medical practitioner and attorney who execute the certificates must reach, but they do not explain the type of information that must underlie these conclusions. Subdivision (h) itself provides that explanation when it states that both declarations must "set[ ] forth the facts which support the declaration." In other words, stating the required conclusions is not sufficient. The certificates must describe the facts that *support* the conclusions. This plain reading of section 340.1 is supported by a leading treatise on California procedure. (Haning et al., Cal. Practice Guide: Personal Injury (The Rutter Group 2014) ¶¶ 5:87.1, 5:88, pp. 5:69 to 5:70 ["The certificate must set forth the supporting facts"].)

The legislative history of section 340.1, subdivision (h) supports the same conclusion. As summarized above (see *ante*, pp. 13-17), this history shows that the certificates were designed as "pleading hurdles" to protect defendants against unmeritorious cases filed simply to harass. That purpose cannot be served by a certificate that says nothing more than that an attorney has discussed the case with the plaintiff and a medical consultant and concluded, without any specified basis, that the case has merit, and a medical practitioner's certificate that says nothing more than that the practitioner has concluded, again without any specified basis, that the plaintiff was subject to childhood sexual abuse. The statute contemplates that trial courts will act as gatekeepers and allow only potentially meritorious cases to pass. Courts cannot exercise that role on the basis of conclusory certificates that in effect say nothing more than "trust me, the plaintiff has valid grounds to file suit."

The certificates of merit filed in this case fall into the "trust me" category. The certificate filed by plaintiff's attorney stated that he had (1) reviewed the "facts of this case;" (2) consulted with a mental health practitioner; (3) the mental health practitioner was "knowledgeable of the relevant facts and issues;" and (4) "I have concluded on the basis of my review and consultation that there is reasonable and meritorious cause for filing this action. This conclusion is based in part on my discussions with the Plaintiff, my interviews of two witnesses who corroborate the Plaintiff's allegations, my consultation with the licensed mental health practitioner, and my review of photographs which show Plaintiff, at age 15, with Defendant Doe 1 at the Playboy Mansion." (PWM, vol. 1, exh. 7, p. 67.)

Trial counsel's bare-bones certificate of merit is deficient because it does not describe any of the facts that support his conclusion that the allegations of the complaint have merit. It certainly provides no factual basis to explain how the memory of this alleged event has been suppressed and was only "discovered" in the past three years, especially in the light of the fact that Ms. Huth tried to make money by selling her story to *The National Enquirer* more than a decade ago. Instead, counsel's declaration simply parrots back to the court the language of the statute itself. Counsel's assertion that he believes the claim has merit does not provide the court with any basis to independently conclude that the claims were filed for any purpose other than to harass.

The mental health practitioner's certificate is equally bereft of supporting facts. After describing his background, Dr. Anthony

Reading, a clinical psychologist, said he interviewed Ms. Huth and "concluded, based upon [his] knowledge of the facts and issues, that there is . . . a reasonable basis to believe that Ms. Huth has been subject to childhood sexual abuse." (PWM, vol. 1, exh. 5, p. 59.) This is an accurate recitation of the words that appear in section 340.1, subdivision (h)(2), but it is nothing more than that. Like the attorney's declaration, it provides no basis for the court to independently decide whether "there is reasonable and meritorious cause for the filing of the action." (§ 340.1, subd. (h)(1).)

Based on the inadequate certificates of merit, plaintiff's claim for childhood sexual abuse should have been dismissed on the court's own motion. That is the reason trial courts have the responsibility to review certificates of merit in camera and determine whether the plaintiff had "reasonable and meritorious cause for the filing of the action." (§ 340.1, subd. (j).) Instead of prohibiting plaintiff from proceeding, the trial court allowed plaintiff to supplement her certificates with new declarations. As we now explain, the court's decision to allow plaintiff to do so raises a second issue for review.

C. The trial court violated section 340.1 by allowing plaintiff to file supplemental certificates of merit after the deadline to do so had run.

Certificates of merit should be filed with the complaint. (See Haning et al., Cal. Practice Guide: Personal Injury, *supra*, ¶ 5:89, p. 5-790 ["Ordinarily, the certificates of merit must be 'filed' *at the time the complaint is filed.* [§ 340.1(g)]];" see also *Doyle*, *supra*, 47 Cal.App.4th at pp. 1706-1707.) The Legislature must have assumed that, once a plaintiff realizes there is a connection between alleged childhood sexual abuse and a psychological injury or illness that occurs *after* the plaintiff turns 18, three years was a sufficient amount of time to contact a mental health practitioner to substantiate the claim.

Unanswered, however, is the question whether a plaintiff who timely files a certificate of merit that is inadequate may correct that defect by filing supplemental declarations after the 60-day statutory deadline has expired. In this case, the trial court allowed Ms. Huth to do precisely that. (PWM, vol. 1, exh. 1, p. 9.) On March 6, 2015—94 days later—the court instructed her counsel to file supplemental declarations. On March 30, 2015—*118 days after filing the complaint*—counsel filed the supplemental declarations. (PWM, vol. 2, exh. 18, p. 252.) Because the 60-day grace period had expired, the question arises whether filing supplemental declarations was permissible.

Section 340.1, subdivision (h)(3) appears to answer that question. It says that certificates of merit "*shall* be filed within 60 days after filing the complaint." (Emphasis added.) Absent contrary indications, the word "shall" in legislation is given its ordinary meaning. (*Woodbury v. Brown-Dempsey* (2003) 108 Cal.App.4th 421, 433 ["Ordinarily, the word 'may' connotes a discretionary or permissive act; the word 'shall' connotes a mandatory or directory duty"].)

In this case, there is good reason to interpret section 340.1, subdivision (h)(3) literally. The certificate of merit is an aspect of the complaint (*Jackson, supra,* 192 Cal.App.4th at p. 755), and it generally must be filed before the statute of limitations has expired. (*Doyle, supra,* 47 Cal.App.4th at p. 1703 ["the statute [section 340.1] requires the filing of the certificates of merit before the running of the statute of limitations"]; *McVeigh v. Doe 1* (2006) 138 Cal.App.4th 898, 905 [same].) The statute gives plaintiffs a 60-day grace period in cases where the certificates cannot be obtained before the statute of limitations expires, but the Legislature did not suspend the statute of limitations indefinitely. The 60-day deadline would be meaningless if a plaintiff could file an inadequate certificate of merit that simply parroted the requirements of the statute within the 60-day extension period, and then, long after both the 60-day period and the statute of limitations had run, file a more complete certificate of merit.

Allowing a plaintiff to supplement an inadequate certificate of merit after the 60-day deadline would also deprive defendant of defenses the Legislature enacted for defendants' benefit.

Mr. Cosby's case shows why. Section 340.1, subdivision (l) provides that "[t]he failure to file certificates in accordance with this section shall be grounds for a demurrer . . . ." On January 26, 2015, Mr. Cosby filed a demurrer to the first amended complaint based in part on Ms. Huth's failure to file certificates of merit in accordance with the statute. (PWM, vol. 1, exh. 9.) By allowing Ms. Huth to supplement her deficient certificates of merit after the deadline to file the certificates expired, the court rendered moot many of the issues Mr. Cosby raised in his demurrer and deprived him of a valid statutory defense to Ms. Huth's claims.

In short, after recognizing that a connection exists between an incident of childhood sexual abuse and a psychological injury, a plaintiff who is more than 26 years old has three years to file a complaint accompanied by certificates of merit. If the plaintiff is unable obtain the certificates before the three-year statute expires and is therefore unable to file them with the complaint, the plaintiff has 60 extra days to do so. But the 60-day grace period cannot be extended further.[3] The validity of the plaintiff's claims must be

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[3] Plaintiff asserted in her brief to the Court of Appeal that the statute of limitations governing her claims does not expire until 2017. (Preliminary Opp. to PWM 19.) If that were so, plaintiff would have had to file the certificates of merit contemporaneously with the initial complaint. Under the statute, the only reason plaintiff would be afforded the 60-day grace period is if the statute of limitations was about to expire and she was unable to obtain the requisite certificates in time to meet the filing deadline. If, according to plaintiff's current theory of the case, the statute of limitations would not expire for nearly three years, there is no reason why plaintiff could not have waited until she obtained the requisite certificates before filing her lawsuit. The theory put forth in plaintiff's (continued...)

tested by the certificates of merit that were filed within 60 days after Ms. Huth filed her complaint. Had that been done here, plaintiff's claims would have been dismissed.

By allowing plaintiff to amend her inadequate certificates of merit more than 60 days after filing her complaint and after the statute of limitations had expired, the trial court allowed plaintiff to ignore the "pleading hurdles" the Legislature erected to protect defendants from stale claims. The protections were not an afterthought. They were discussed in the first paragraph of the sponsor's letter to the Governor urging his signature on the 1994 Bill. (MJN, vol. 3, exh. B, p. 595 ["AB 2846 establishes new procedures applicable to such cases to protect against the possibility of false or unfounded suits"].) The protections were clearly of great importance to the Legislature when it enacted what one Assembly Committee referred to as "such a liberal extension of the statute of limitations." (MJN, vol. 3, exh. B, p. 587.)

By ignoring the procedural protections of the statute and allowing the case to proceed, the trial court has caused Mr. Cosby irreparable harm. The California Constitution treats privacy as an inalienable right. (Cal. Const., art. I, § 1.) Mr. Cosby's privacy was violated by plaintiff when she violated virtually every one of the procedural protections in section 340.1 that were designed to protect

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(...continued)
preliminary opposition is in any event at odds with the declaration her attorney filed in conjunction with the original certificates of merit 10 days after filing the complaint. In the declaration, counsel averred that he had to file immediately to avoid the statute of limitations from running. (PWM, vol. 1, exh. 6.)

defendants from the public airing of false accusations. Her new counsel has stated that she plans to immediately take Mr. Cosby's deposition. If that were to occur, it would further intrude on Mr. Cosby's privacy, particularly if information about plaintiff's allegations became public.[4] The only way to remedy the past and future harm is to immediately terminate this improper litigation.

CONCLUSION

For the reasons explained above, this Court should grant Mr. Cosby's petition for review. At minimum, this Court should grant Mr. Cosby's petition for review and transfer the matter to the Court of Appeal with directions to hear Mr. Cosby's writ petition on the merits.

June 8, 2015

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By: _____
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[4] See Gloria Allred, Gloria's Videos and Press Statements of 2015 [5.29.15-Gloria announces breaking news on alleged victim's lawsuit against Bill Cosby <http://goo.gl/6mBTla> [as of June 3, 2015].)

CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.504(d)(1).)

The text of this petition consists of 6,299 words as counted by the Microsoft Word version 2010 word processing program used to generate the petition.

Dated: June 8, 2015

Frederic D. Cohen

COURT OF APPEAL ORDER DENYING PETITION FOR REVIEW AND REQUEST FOR STAY DATED 05/28/2015

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

WILLIAM H. COSBY, JR.,

Petitioner,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

JUDY HUTH,

Real Party in Interest.

B263779
(Los Angeles County Super. Ct. Case No. BC565560)
(Craig D. Karlan, Judge)

ORDER

BY THE COURT:*

The petition for writ of mandate, requesting an immediate stay, and the accompanying request for judicial notice have been read and considered. The opposition filed by real party in interest and petitioner's reply have also been read and considered. Real party in interest's related motion to file certain documents under seal is granted.

Petitioner's request for judicial notice is granted. The petition for writ of mandate and request for stay are denied.

* EDMON, P.J. KITCHING, J. ALDRICH, J.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 15760 Ventura Boulevard, 18th Floor, Encino, California 91436-3000.

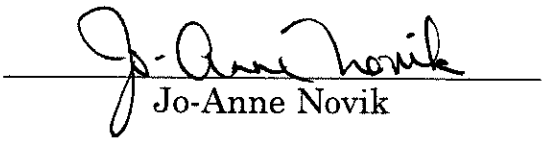
On June 8, 2015, I served true copies of the following document(s) described as **PETITION FOR REVIEW** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 8, 2015, at Encino, California.



Jo-Anne Novik

SERVICE LIST

Cosby v. Superior Court (Huth)
Los Angeles County Superior Court Case No. BC565560
Court of Appeal Case No. B263799
Supreme Court Case No. S_____

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Clerk to the Honorable Craig D. Karlan Santa Monica Courthouse Los Angeles County Superior Court 1725 Main Street, Dept. N Santa Monica, CA 90401-3299	Trial Judge [L.A.S.C. Case No. BC565560]
Clerk of the Court Second Appellate District, Division Three California Court of Appeal 300 S. Spring Street 2nd Floor • North Tower Los Angeles, CA 90013	Court of Appeal [Case No. B263799] Service copy e-submitted pursuant to Second District's electronic filing program