

**SYRACUSE UNIVERSITY COLLEGE OF LAW**

In re LEONARD J. AUDAER       )  
  )  
          Defendant.                   )  
\_\_\_\_\_                                  )

**[Proposed] ORDER TO SHOW CAUSE  
RE REQUEST FOR PROTECTIVE ORDER**

**TO LEONARD J. AUDAER AND HIS COUNSEL OF RECORD:**

PLEASE TAKE NOTICE that Gregory Germain, the prosecutor under the Syracuse University Code of Student Conduct, has filed with this panel a motion requesting an order to show cause for the issuance of a protective order (the “Motion”). A copy of the Motion and the proposed protective order is attached to this order.

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YOU ARE HEREBY ORDERED to file any written objection to the motion within ten (10) calendar days from the date of this order. If you do not file a written objection, the panel may issue the order. Please indicate in any opposition whether you wish to be heard in connection with the motion.

Dated: \_\_\_\_\_

THE SYRACUSE UNIVERSITY  
COLLEGE OF LAW HEARING  
PANEL

By \_\_\_\_\_  
Leslie Bender, Presiding Judge  
Syracuse University College of Law  
Code of Student Conduct Hearing  
Panel

SYRACUSE UNIVERSITY COLLEGE OF LAW

In re LEONARD J. AUDAER            )  
  )  
                  Defendant.                )  
\_\_\_\_\_  
  )

**NOTICE OF MOTION AND MOTION  
FOR AN ORDER TO SHOW CAUSE RE:  
REQUEST FOR PROTECTIVE ORDER**

**TO LEONARD J. AUDAER:**

PLEASE TAKE NOTICE that Gregory Germain (the “Prosecutor”), the faculty prosecutor under the Syracuse University College of Law Code of Student Conduct (the “Code”), has filed a motion for a protective order and for an order to show cause why the protective order should not be issued. The requested protective order would prohibit the parties and their agents from directly or indirectly disclosing on the internet or otherwise the names of students, faculty or staff who were named in the [www.wordpress.sucolitis](http://www.wordpress.sucolitis) blog, have filed allegations against Audaer, who testify in the proceeding, or who are mentioned in the pleadings and other materials that are submitted in connection with this matter, and requiring that any redacted public disclosure be complete in order to avoid misrepresenting the proceedings.

The motion is filed without first filing the complaint under seal pursuant to an agreement between the Prosecutor and Audaer’s counsel.

The students, faculty and staff who were targeted in the [sucolitis](http://www.wordpress.sucolitis) blog did not consent to have their good names used in the blog, and do not wish to be the subject of attacks on the internet. One of the students has expressed to the Prosecutor a concern for

her physical safety.<sup>1</sup> Most wish to find jobs in the legal profession, and feel that bringing further public attention through the publication of their names could damage their employment opportunities, and would cause further humiliation and embarrassment. A protective order is appropriate to maintain the *status quo* while the panel determines whether the Blog constitutes a violation of the terms of the Code, and whether Audaer is responsible for its content.

The Code did not envision a charged student seeking public attention for the proceedings. The Code was designed to protect the privacy rights of charged students, who in normal circumstances would not want the allegations and charges to be publicly known for fear that the information would harm their own reputation. This is the first case the Prosecutor has been involved with where student who has been investigated for violating the Code has actively sought media attention.<sup>2</sup>

In order to protect student privacy rights, the Code provides:

**Affirmation of Confidentiality.** All Student and Faculty Panelists and the Prosecutor shall be required to take the following affirmation administered by the Prosecutor: "We affirm that any information acquired by us as a result of our participation in any proceedings pursuant to this Code of Student Conduct shall be held in strictest confidence and that we shall never disclose any of the information so acquired, except in the manner prescribed by this Code of Student Conduct."

The prosecutor requests the issuance of a protective order to similarly protect the identity of the innocent student, faculty and staff members who were targeted in the blog without their consent, or who have complained about, will testify in this case, or are mentioned in the pleadings to prevent further outside attention, harassment and ridicule.

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<sup>1</sup> Audaer in his radio appearance expressed similar concern for his physical safety.


<sup>2</sup> The Prosecutor has made no public statements implicating any individual students in his investigation. The only reason the public is aware that Audaer has been investigated for violating the Code is because Audaer has disclosed to the media the Prosecutor's private statements to him.

This provides the victims of the blog with the same type of confidentiality afforded by the Code to the charged student, and prevents witness intimidation and tampering.

The order would permit Audaer to publish (or disclose to third parties who may publish) the materials he receives in connection with this case on the internet or otherwise, provided that all names of non-consenting students, faculty or staff are redacted, and provided of any disclosure be made in its entirety (except for the redacted names) to prevent misrepresentations regarding the nature of this proceeding and the issues involved.

The Prosecutor therefore requests that the panel promptly issue an order requiring Audaer, within ten calendar days from the date the order to show cause is issued, to file a written opposition to the motion for a protective order if he wishes to do so.

Dated: December 13, 2010

  
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Gregory Germain  
Syracuse University College of Law  
Faculty Prosecutor

## SYRACUSE UNIVERSITY COLLEGE OF LAW

In re LEONARD J. AUDAER       )  
  )  
                  Defendant.       )  
\_\_\_\_\_  
  )

### PROPOSED PROTECTIVE ORDER

The parties to this proceeding (Leonard J. Audaer and Gregory Germain, the faculty prosecutor), and their agents, are hereby ordered not to post on the internet or otherwise disclose the content of the [www.wordpress.sucolitis](http://www.wordpress.sucolitis) website or any information obtained in the course of this proceeding, including without limitation the complaint, the students' charging statements, the blog entries, and the testimony of witnesses, without assuring that all recipients of the information agree in writing as follows:

1.     The names of the individuals identified in the information will not be disclosed in any article or posting on the internet in on any other public forum, without the prior written consent of the named individuals.

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2. In order to prevent misleading selective posting of information, if any document is posted on the internet or is otherwise made available on a public forum, the document must be posted in its entirety, except that the names of non-consenting individuals will be redacted and removed before posting.

Dated: \_\_\_\_\_

THE SYRACUSE UNIVERSITY  
COLLEGE OF LAW HEARING  
PANEL

By \_\_\_\_\_  
Leslie Bender, Presiding Judge  
Syracuse University College of Law  
Code of Student Conduct Hearing  
Panel

## SYRACUSE UNIVERSITY COLLEGE OF LAW

In re LEONARD J. AUDAER       )  
  )  
                          Defendant.       )  
\_\_\_\_\_  
  )

I, Gregory Germain, declare as follows:

1.       I am an attorney at law, licensed to practice in the State of New York. I am an Associate Professor at the Syracuse University College of Law, and was appointed by the faculty to be the “faculty prosecutor” under the Syracuse University College of Law Code of Student.

2.       The faculty prosecutor is required to investigate allegations made by students or others that a student in the College of Law has violated the Code of Student Conduct.

3.       I have received three formal complaints from students in connection with the [www.wordpress.sucolitis.com](http://www.wordpress.sucolitis.com) blog (the “Blog”) alleging a violation of the Code of Student Conduct.

4.       I have investigated these complaints by, among other things, reviewing the blog postings, interviewing the alleging students, interviewing others whose names came up during the investigation, interviewing Leonard Audaer (“Audaer”) who has been the prime target of the investigation, and meeting with Audaer’s lawyer.

5.       I have never publicly discussed who is the target of my investigation, nor have I made any public comments about any of the information learned in my investigation. I have responded to two media inquiries made to me following Mr. Audaer’s participation in a story in the Daily Orange about the investigation. In those



interviews, I advised the reporter that I could not comment about the investigation but could answer questions about the process. I stated my opinions about the content of the public Blog and the standard for prosecution under the Code. I have refused all media requests for information concerning the information discovered in my investigation and the identity of the individuals being investigated in order to protect their rights to privacy.

6. I have been informed by several reporters that Audaer and his counsel have actively solicited media attention for the case. I believe that a protective order is necessary and appropriate to prevent any of the parties from publicizing the names of the innocent students, faculty and staff who were named in the sucolitis blog, who have filed complaints, who are named in the pleadings filed in connection with this case, or who otherwise participate in the proceedings, unless the individuals consent to have their names disclosed.

I declare under penalty of perjury that the foregoing is true and correct of my own personal knowledge.

Dated: December 8, 2010

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

Gregory Germain

## PROOF OF SERVICE

I, Anne Hensberry, declare as follows:

I am over the age of 21 and not a party to this action. On December 14, 2010, I served the following pleadings:

- (1) [Proposed] ORDER TO SHOW CAUSE RE REQUEST FOR PROTECTIVE ORDER
- (2) NOTICE OF MOTION AND MOTION FOR AN ORDER TO SHOW CAUSE RE:  
REQUEST FOR PROTECTIVE ORDER;
- (3) PROPOSED PROTECTIVE ORDER; AND
- (4) GREGORY GERMAIN DECLARATION

By placing them in an envelope and depositing the envelope in the United States Mail, with proper postage, addressed as follows:

MARK DAVID BLUM  
Attorney at Law  
Post Office Box 82  
Manlius, New York 13104

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

Dated: \_\_\_\_\_

December 14, 2010

Anne Hensberry  
Anne Hensberry