

DISTRICT COURT, FREMONT COUNTY,
COLORADO
Court Address: 136 Justice Center Rd., Rm. 103
Canon City, CO 81212
Court Phone: (719) 269-0100

DATE FILED: April 13, 2022

THE PEOPLE OF THE STATE OF COLORADO,

v.

BARRY LEE MORPHEW, Defendant.

▲ COURT USE ONLY ▲

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Case Number: 22CR47

Division: 1

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*ATTORNEYS FOR DEFENDANT BARRY LEE
MORPHEW*

MOTION TO LIMIT PUBLIC ACCESS TO MOTIONS [D-98]

Pursuant to Crim. P. Rule 55.1, Mr. Morpew requests that this Court limit public access to his Motions D-96 and D-97 , their attachments and exhibits, their proposed orders, and this motion, all submitted for filing on April 12, 2022.

Pursuant to Rule 55.1(a)(2), upon receipt of this motion, **the Clerk “shall make the subject court record inaccessible to the public pending the court's resolution of the motion....”**

Pursuant to Rule 55.1(b), Mr. Morpew states:

1. **Identify court record.** The court record are Mr. Morpew’s Motions D-96 and D-97 , their attachments and proposed orders, submitted for filing on April 12, 2022.

2. **Reasons for the request.** These motions concern ongoing jury tampering and the need to take measures to protect Mr. Morpew’s right to a fair trial. Specific actions of specific people in the community – including at least one summoned juror – are discussed and remedial orders requested. Revealing the substance of the allegations and copies of the social media posts at issue runs the great risk of exacerbating contamination of the jury pool. There is no doubt that the information would be splattered all over social media instantly and within reach of the prospective jurors. The information, if in the public domain would be highly prejudicial, information and speculation that will certainly never be ruled admissible will substantially risk Mr. Morpew’s right to a fair trial and will jeopardize the ability to empanel a jury in this County.

3. **Length of inaccessibility.** At a very minimum, the material should be inaccessible until after the trial of this case, at which point this court can make a decision about public access at that time.

4. **Court hearing.** This Court has the authority to close the hearing on this motion to limit access if this Court “finds that doing so is necessary to prevent the public from accessing the information that is the subject of the motion under consideration.” Rule 55.1(a)(5). Such closure is necessary to prevent the public from accessing the material.

It is possible that a partial closure of the hearing would prevent the material from reaching the public until a ruling, if the parties were ordered to refrain from discussing the actual material except at the bench.

5. **Redactions.** Mr. Morpew has considered whether redacted documents could be released to the public without contaminating the jury pool. It does not appear to be possible because

of the nature of the material and the manner in which it must be discussed in the motion, response, and hearing. Further, any information about the jury tampering would contaminate the jury pool, however redacted. Certainly the people posting their intentions to contaminate the jury pool would wear it as a badge of honor and know that the information concerned them specifically.

6. Court order and findings requested. Rule 55.1(a)(6).

The substantial interests that would be served by making the court records inaccessible to the public or by allowing only a redacted copy of it to be accessible to the public include: Mr. Morphew's constitutional right to a fair and impartial jury and the interests of all parties and the court in being able to seat a jury that has not been contaminated by pretrial exposure. Substantial interests would be severely impaired if it becomes impossible to seat a jury, because it would cause a mistrial, a delay in resolution of this case, and quite probably a change of venue.

No less restrictive means than making the record inaccessible to the public exists to achieve or protect the substantial interests identified. As mentioned above, a redaction process would be ineffective.

The substantial interests identified override the presumptive public access to the court records. Restricting access only until the trial is concluded does not deprive the public of the filing forever, but places a reasonable restriction on its dissemination at this critical point prior to trial. This minimal restriction – a delay only, not a complete bar – is necessitated by the closeness to trial, the fact that the juror summons have already been issued, and the fact that the documents contain information that has already been excluded as evidence and additional material that this Court will exclude from trial once a hearing on the Motions is held.

7. Duration of Order Granting Request. Rule 55.1(a)(7). Mr. Morphew requests that access be limited until the trial is concluded, and then a decision can be made whether this document may be disclosed

Mr. Morphew requests that the Clerk immediately limit public access and that this Court grant the motion to limit public access. Mr. Morphew requests that, if this Court does not grant this motion outright, this Court hold a hearing on this motion.

Respectfully submitted this 13th day of April, 2022.

EYTAN NIELSEN LLC

s/ Iris Eytan
Iris Eytan, #29505

FISHER & BYRIALSEN, PLLC

s/ Jane Fisher-Byrialsen
Jane Fisher-Byrialsen, #49133

SAMPLER AND WHITSON

s/ Hollis Whitson
Hollis Whitson, #32911

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April 2022, a true and correct copy of the foregoing **MOTION TO LIMIT PUBLIC ACCESS [D-98]** was served via CCE as follows: 11th Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

s/ Tonya Holliday
Tonya Holliday