

ARAPAHOE COUNTY
COMBINED COURT

2012 JUL 27 PM 3:5

DISTRICT COURT
ARAPAHOE COUNTY, COLORADO
Court Address: Arapahoe County Justice Center
7325 S. Potomac St., Centennial, CO 80112

Redacted

THE PEOPLE OF THE STATE OF COLORADO vs.
Defendant:
JAMES EAGAN HOLMES

COURT USE ONLY

Attorney:
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Atty. Reg. #: 14948

Case Number:
12CR1522
Division/Ctrm:
22

PEOPLE'S MOTION (P-7)

**MOTION TO CLARIFY COURT ORDER RE MOTION TO LIMIT PRE-TRIAL
PUBLICITY (D-2)**

The People move for clarification of the Court's July 23, 2012 "Order Re Motion to Limit Pre-Trial Publicity (D-2)" because, as currently worded, it is internally inconsistent and confusing.

1. Although page 1 of the order states, "Colorado Rules of Professional Conduct 3.6 and 3.8 provide the basis for this Order," the order's next page—as written—is inconsistent with Rule 3.6.
2. Rule 3.6(a) prevents a lawyer from making extrajudicial statements that the lawyer knows or should know will be disseminated by means of public communication, *and* that "will have a substantial likelihood of materially prejudicing" an adjudicative proceeding in the matter.
3. Rule 3.6(b) clarifies that, notwithstanding the limitation imposed by 3.6(a) and Rule 3.8(f), a lawyer may state certain specific categories of information, which are listed as subparagraphs (1) through (7) of 3.6(b).
4. Paragraph I(A) of the Court's order, at first glance, appears to track the language of Rule 3.6(a) and (b), but—when read carefully—it omits two key phrases. First, from 3.6(a) it omits the phrase, "and that will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." Second, from 3.6(b) it omits the phrase, "Notwithstanding paragraph (a) and Rule 3.8(f), a lawyer may state" These omissions make the order very different from Rule 3.6.



5. Because of the omissions, the order prohibits the making of *any* statement that goes beyond the specific categories of information listed in subparagraphs (1) through (7) of Rule 3.6(b). Rule 3.6, by contrast, allows not only those categories of information, but also allows other statements about the matter: the only prohibition in Rule 3.6 is on extrajudicial statements that “will have a substantial likelihood of materially prejudicing” an adjudicative proceeding in the matter.

6. As Comment 4 to Rule 3.6 explains, “Paragraph (b) is not intended to be an exhaustive listing of the subjects upon which a lawyer may make a statement, but statements on other matters may be subject to paragraph (a).” In other words, under Rule 3.6 lawyers *can* make public statements beyond the categories of information listed in subparagraphs (1) through (7) of Rule 3.6(b), so long as the statements will not “have a substantial likelihood of materially prejudicing” an adjudicative proceeding in the matter.


7. Because Paragraph I(A) of the Court’s order, as currently written, restricts public comment to *only* the categories of information listed in subparagraphs (1) through (7) of Rule 3.6(b), the order is inconsistent with the Rule.

8. The People believe the order contains another inconsistency. Paragraph I(D), as currently written, is “surplusage”—meaning that it is unnecessary. Paragraph I(D) prohibits the making of statements that are already precluded by Paragraph I(A), because they go beyond the very limited types of information that Paragraph I(A) permits.

9. The People think it likely that, in crafting the order, the Court intended to track the language of Rules 3.6 and 3.8. The People therefore ask that the Court modify the order to be more consistent with those rules.

10. If the parties and law enforcement agencies are essentially prevented from saying anything about this case, the news media will fill that void. The void will be filled with information from less authoritative sources and, because such information may in some instances be inaccurate, there is an even greater likelihood of prejudicing the rights of the parties. Under the Court’s order as currently worded, the parties and law enforcement agencies cannot correct inaccurate information, even if doing so would enhance the fairness of the proceedings. The People therefore ask that the Court’s order be modified to be more consistent with Rules 3.6 and 3.8 of the Colorado Rules of Professional Conduct.

Carol Chambers, District Attorney

By 
Chief Deputy District Attorney
Registration No. 23036

Case: 12CR1522
JAMES HOLMES

CERTIFICATE OF MAILING

I hereby certify that I have deposited a true and correct copy of the foregoing **MOTION TO CLARIFY COURT ORDER RE MOTION TO LIMIT PRE-TRIAL PUBLICITY (D-2)** in the Public Defender's Mailbox located at 6450 S Revere Pkwy Centennial CO 80111, addressed to:

TAMARA BRADY, ESQ.
DANIEL KING, ESQ.
OFFICE OF THE PUBLIC DEFENDER

Dated: 7/27/12

By  _____
Certifying Secretary