

DISTRICT COURT, FREMONT COUNTY, COLORADO 136 Justice Center Rd., Canon City, CO 81212 Court Phone: (719) 269-0100	DATE FILED: April 7, 2022
THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.	▲ COURT USE ONLY ▲
Iris Eytan, #29505 Eytan Nielsen LLC 3200 Cherry Creek South Drive, Suite 720 Denver, CO 80209 Telephone: (720) 440-8155 Facsimile: (720) 440-8156 <a href="mailto:iris@eytan-nielsen.com">iris@eytan-nielsen.com</a>  Jane Fisher-Byrialsen, #49133 Fisher & Byrialsen, PLLC 4600 South Syracuse St., 9th Floor, Denver, Colorado 80237 <a href="mailto:jane@fblaw.org">jane@fblaw.org</a>  Hollis Whitson, #32911 Samler and Whitson, PC 1600 Stout Street, Suite 1400 Denver, CO 80202 303-670-0575 <a href="mailto:Hollis@SamlerandWhitson.com">Hollis@SamlerandWhitson.com</a>  <i>ATTORNEYS FOR DEFENDANT BARRY LEE          MORPHEW</i>	<hr/> Case Number: 22CR47 Division: 1
<b>MOTION TO LIMIT PUBLIC ACCESS [D-95]</b>	

Pursuant to Crim. P. Rule 55.1, Mr. Morphew asks this Court to limit public access to:

- (1) the Attachment 1 to his D-93, "Submission of Defense Proposed Jury Questionnaire,"
- (2) the Attachment 1 to his D-94, "Submission of Proposed Orientation for Jurors," and
- (3) the Attachment to P-40, "People's Proposed Juror Questionnaire [sic]", filed in Chaffee County No. 21CR78 on January 27, 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 records are as follows:

- (1) the Attachment 1 to Mr. Morpew’s D-93, “Submission of Defense Proposed Jury Questionnaire” (submitted on April 7, 2022),
- (2) the Attachment 1 to his D-94, “Submission of Proposed Orientation for Jurors,” (submitted on April 7, 2022), and
- (3) the Attachment to P-40, “People’s Proposed Juror Questionnaire [sic]”, filed by the prosecution in Chaffee County No. 21CR78 on January 27, 2022.

**2. Reasons for the request.** The documents are the prosecution’s and defense’s proposed jury questionnaires and the defense’s proposed remarks for prospective jurors prior to them opening their packets and filling out their jury questionnaire. Publication of this material prior to trial, this close to trial, could negatively impact the ability to obtain a fair and impartial jury.

It is likely that, if the proposed draft jury questionnaires and proposed draft remarks to jurors is publicly available, it will be broadcast in a variety of online and social media platforms. Prospective jurors who have received summons are already posting about their summons on social media. Social media is being utilized to plan a demonstration at the courthouse for the day(s) at which prospective jurors are returning to fill out their questionnaires and probably for the trial as well. In these posts, individual(s) describe their strong feelings that Barry Morpew is guilty. Broadcasting draft juror materials this close to trial would 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.** The documents should be inaccessible until the conclusion of trial or, at minimum, until the trial jury is sat and sworn in, at which point this court can make a decision about public access at that time. This Court may elect to permit the public to access the final blank jury questionnaire, for example. But this should not occur until perhaps the end of trial, and certainly should not occur before the jury is sworn.

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 documents identified above.

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.** Redacting the documents would not be possible and would still risk contamination of the jury pool. Redactions of the blank draft questionnaires would defeat the purpose of limiting public access. The same is true for the proposed draft jury orientation introduction.

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. It is extremely important the prospective jurors give their complete, honest views on the questionnaires. Interference with that would damage the integrity of the jury selection process. 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.

Further, these documents are drafts only and could be revised over the next three weeks. The drafts should not be in the public domain this close to trial.

No less restrictive means than making the documents inaccessible to the public exists to achieve or protect the substantial interests identified. As mentioned above, a redaction process would not be possible given the nature of the documents.

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 directly related to the jury selection process itself.

7. **Duration of Order Granting Request.** Rule 55.1(a)(7). Mr. Morphew requests that access be limited until the trial is concluded, or at the very least until the jury is sat and sworn, and then a decision can be made whether these documents may be disclosed or whether instead the public interest could be satisfied by making accessible a blank copy of the final documents that were utilized (not the drafts submitted by the parties).

Mr. Morphew requests that the Clerk immediately limit public access to the attachments to D-92, D-93, and P-40, and any future jury selection documents submitted by the parties in this case. Mr. Morphew requests that, if this Court does not grant this motion outright, this Court should hold a hearing on this motion.

Respectfully submitted this 7th 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 7th day of April 2022, a true and correct copy of the foregoing **MOTION TO LIMIT PUBLIC ACCESS [D-95]** was served via CCE as follows: 11<sup>th</sup> Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

*s/ Tonya Holliday*  
Tonya Holliday