

<p>DISTRICT COURT, FREMONT COUNTY, COLORADO 136 Justice Center Rd., Canon City, CO 81212 Court Phone: (719) 269-0100</p>	<p style="text-align: right;">DATE FILED: April 15, 2022</p>
<p>THE PEOPLE OF THE STATE OF COLORADO, Plaintiff, v. BARRY LEE MORPHEW, Defendant.</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
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<p style="text-align: center;">MOTION TO LIMIT PUBLIC ACCESS [D-99a]</p>	

Pursuant to Crim. P. Rule 55.1, Mr. Morphey asks this Court to limit public access to the Attachment to his D-99, "Objection to any Set-Aside and Follow-The-Law Questions in the Jury Questionnaire."

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 is the Attachment to his D-99, “Objection to any Set-Aside and Follow-The-Law Questions in the Jury Questionnaire.” The Attachment is a Declaration. It is also cross-referenced in D-49 Motion for Modification of Procedures, and D-100, Motion for Additional Peremptory Challenges.

2. Reasons for the request. The Declaration contains sensitive jury information that should not reach prospective jurors prior to the jury being empaneled. As with other filings, Mr. Morpew is endeavoring to keep out of the hands of prospective jurors information that might contaminate or taint the jury selection process. The Declaration includes attachments such as data, sample instructions and questionnaires, and similar jury selection materials. 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 Declaration is made public, 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 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 Declaration 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.

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. It is also likely that the prosecution will not oppose the relief sought and there will be no need for a contested hearing.

5. **Redactions.** Redacting the Declaration would not be practicable. It is a lengthy declaration and on virtually every page is material that should not reach summoned jurors.

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

The substantial interests that would be served by making the court record inaccessible 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.

No less restrictive means than making the document 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 Declaration. Keeping the motions themselves open to the public will satisfy the public interest in knowing progress on the case, without the necessity for broadcasting something as sensitive as the Declaration.

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 Declaration contains 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 the court should lift its limited access order.

Mr. Morpew requests that the Clerk immediately limit public access to the attachment to D-99, which is also referenced in D-49 and D-100. Mr. Morpew requests that, if this Court does not grant this motion outright, this Court should hold a hearing on this motion.

Respectfully submitted this 15th 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 15th day of April 2022, a true and correct copy of the foregoing **MOTION TO LIMIT PUBLIC ACCESS [D-99a]** was served via CCE as follows: 11th Judicial District Attorney's Office, 101 Crestone Ave., Salida, CO 81201

s/ Hollis Whitson
Hollis Whitson