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DISTRICT COURT, COUNTY OF ARAPAHOE, STATE OF COLORADO 7325 S Potomac Street Centennial, Colorado 80112	▲ COURT USE ONLY ▲
Plaintiff: <b>People of the State of Colorado</b>  v.  Defendant: <b>James Holmes</b>	Case No. 12CR1522  Division: <b>22</b>
<b>AMENDED ORDER RE MOTION TO LIMIT PRE-TRIAL PUBLICITY (D-2a)</b>	

This matter comes before the Court on Defendant's Motion to Limit Pre-Trial Publicity (D-2), filed July 20, 2012; The People's Motion to Clarify Court Order Re Motion to Limit Pre-Trial Publicity (P-7), filed July 27, 2012; Defendant's Response to People's Motion to Clarify Court Order Re Motion to Limit Pretrial Publicity (P-7), filed July 30, 2012; and [Corrected] Motion by Media Petitioners for Clarification of the Court's Orders Regarding Pre-Trial Publicity (P-7), filed August 6, 2012. This Order now supersedes the Court's Order Re: Motion to Limit Pre-Trial Publicity (D-2). Having reviewed the pleadings and applicable authorities and after hearing argument from the parties, the Court FINDS and ORDERS as follows:

The Court's current Order Re Motion to Limit Pre-Trial Publicity (D-2) substantially tracks Rules 3.6 and 3.8 of the Colorado Rules of Professional Conduct. Now that some time has elapsed from the date of the filing of this case, the Court finds it appropriate to more directly track Rules 3.6 and 3.8. This Amended Order Re Motion to Limit Pre-Trial Publicity (D-2a) does just that.

Defendant has sought an Order restricting pretrial publicity. Defendant's case has already received substantial attention from the media. The case is likely to continue to generate media attention. In light of such anticipated publicity and of the difficulty in anticipating all possible scenarios, this Order is meant to provide guidelines to all involved in this case. Furthermore, a pretrial publicity order seeks to ensure evidence is not compromised or contaminated and that the investigation is not compromised prior to the time the investigation is complete.

Counsel involved in this matter will no doubt conduct themselves in a professional way. However, the nature of this case and the pretrial publicity that has already occurred, together with the anticipated publicity from the trial, demonstrate the need for Court intervention to guide the conduct of counsel and those associated with them to avoid lowering the level of advocacy in this case.



When lawyers quarrel with each other, the arguments sometimes tend to become acrimonious. Disputes of this type divert time, energy, and resources from the primary task of preparing for trial to determine the provability of charges. The public spectacle of a quarrel among attorneys over allegations of ethical improprieties would greatly reduce the public's confidence in the adjudicative process. The news coverage of the proceedings would focus on personalities of the advocates and deflect attention from their advocacy of important legal and factual issues which will determine the outcome of this case.

Without suggesting that there have been any violations of general ethical principles, it is necessary for the Court to articulate the following standards to be followed in this litigation in the form of this Order for future guidance in all forms of extrajudicial statements about this litigation.

Colorado Rules of Professional Conduct 3.6 and 3.8 provide the basis for this Order.

### **I. Extrajudicial Statements by Attorneys:**

A. Any lawyer, law firm, or legal representative (including investigators of any firm) associated with the prosecution or defense participating in, having participated in, or associated with the investigation or litigation of this criminal matter shall not, from the filing of a complaint, information or indictment, or the issuance of an arrest warrant or arrest, until the commencement of the trial or disposition without trial, make an extrajudicial statement that he or she knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

B. Notwithstanding paragraph (A) above and Rule 3.8(f) of the Colorado Rules of Professional Conduct, a lawyer, law firm, or legal representative (including investigators of any firm) associated with the prosecution or defense participating in, having participated in, or associated with the investigation or litigation of this criminal matter, may state:

- (1) The claim, offense, or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) Information contained in the public record;
- (3) That an investigation of a matter is in progress;
- (4) The scheduling or result of any step in litigation;
- (5) A request for assistance in obtaining evidence and information necessary thereto;
- (6) A warning of danger considering the behavior of a person involved, when there is reason to believe there exists the likelihood of substantial harm to an individual or to the public interest;
- (7) The identity, residence, occupation, and family status of the accused;

- (8) If the accused has not been apprehended, information necessary to aid in apprehension of that person; and
- (9) The fact, time, and place of an arrest as well as the identity of the investigating and arresting officers or agencies, and the length of the investigation.

C. Notwithstanding paragraph (A) and Rule 3.8(f), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

D. No lawyer associated in a firm or government agency with a lawyer subject to paragraph (A) shall make a statement prohibited by paragraph (A).

E. The Court notes that there are certain subjects that are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter that is tried to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

- (1) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;
- (2) In a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;
- (3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;
- (4) Any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;
- (5) Information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial; or
- (6) The fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

F. Any lawyer or law firm participating in, having participated in, or associated with

the prosecution or defense of this criminal matter shall exercise reasonable care to prevent his or her employees and associates from making an extrajudicial statement that he or she would be prohibited from making under this Order.

G. The Court anticipates that it will issue another Order regarding publicity prior to the commencement of any trial in this matter.

## **II. Releases of Information by Law Enforcement Agencies:**

A. Law enforcement officers and agencies are subject to the same restrictions as set forth above for attorneys in Section I regarding extrajudicial statements; they are also subject to the restrictions outlined for prosecutors under Rule 3.8.

B. Law enforcement officers and agencies shall not exercise their custodial authority over an accused individual in a manner that is likely to result in either:

- (1) The deliberate exposure of a person in custody for the purpose of photographing or televising by representatives of the news media; or
- (2) The interviewing by representatives of the news media of a person in custody except upon request or consent by that person to an interview after being informed adequately of the right to consult with counsel and of the right to refuse to grant an interview.

C. Nothing in this Order is intended to preclude any law enforcement officer or agency from replying to charges of misconduct that are publicly made against him or her or from participating in any legislative, administrative, or investigative hearing.

## **III. Disclosure by Court Personnel:**

Court personnel shall not disclose, to any unauthorized person, information relating to this pending criminal case that is not a matter of public record of the court and that may be prejudicial to the right of the People or the Defendant to a fair trial.

## **IV. Applicability:**

Attorneys of record will be served a copy of this Order, and this will constitute service upon the District Attorney's Office and the Public Defender's Office. The Court Orders the District Attorney's Office to comply with Colorado Rule of Professional Conduct 3.8(f) in exercising reasonable care to ensure all applicable law enforcement agencies, including, but not limited to, the Aurora Police Department, Arapahoe County Sheriff's Department, Colorado Bureau of Investigation, Federal Bureau of Investigation, and the Bureau of Alcohol, Tobacco, Firearms and Explosives, all receive prompt notice of this Order and comply with this Order accordingly.

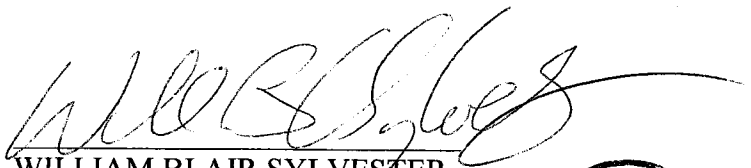
## V. Non-Law Enforcement Agencies

In its [Corrected] Motion by Media Petitioners for Clarification of the Court's Orders Regarding Pre-Trial Publicity (P-7), the Media requests that the Court direct agencies not specifically named in the Pre-Trial Publicity Order how to interpret the Order. This Court commends everyone who is subject to the Pre-Trial Publicity Order who has strictly adhered to the same. The Court also understands and appreciates that other agencies which may not be bound by this Order are astute enough to be cautious in protecting the integrity of this process. It is heartening to see that agencies are taking a reasonable, cautious approach in not wanting to be the ones responsible for jeopardizing the truth-seeking functions of our criminal justice system. However, this Court is focused on protecting the fairness of the process for all involved in this case. If the Media has an issue with the other agencies' interpretations of the Court's Order or with the People and agencies' application of Colorado Rule of Professional Conduct 3.8(f), the Media may address those issues with the other agencies directly instead of with this Court, as those issues are not within this Court's province to determine. Perhaps the other agencies believe it would be contrary to the public interest to do anything other than what is required of those agencies specifically named in this Order. The Court is not in a position to guess as to the provisions of law upon which the other agencies are relying, and this Court will not instruct them on how they should interpret their obligations under the law.

Defense Counsel, Mr. King, requests this Court to expand its Pre-Trial Publicity Order to specifically name Mr. Zansberg, Counsel for Media Petitioners, as being covered by its provisions. The Court declines the invitation to do so.

The Motions, any Responses, and this Order are not subject to the Order Regarding Motion to Unseal Court File (Including Docket) ("Suppression Order") (C-4c) and shall be available to any person.

DATED this 13th day of August, 2012.

  
WILLIAM BLAIR SYLVESTER  
DISTRICT COURT JUDGE



CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2012, a true and correct copy of **AMENDED ORDER RE MOTION TO LIMIT PRE-TRIAL PUBLICITY (D-2a)** was served upon the following parties of record.

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