

Rule 25. Special Rules Governing Exclusion of the Public from Pretrial Hearings and Prejudicial Publicity**25.01 Pretrial Hearings - Motion to Exclude Public**

The following rules govern orders excluding the public from any pretrial hearing and restricting access to the orders or to transcripts of the closed proceeding.

Subd. 1. Grounds for Exclusion of Public. Any part of a pretrial hearing may be closed to the public on motion of any party or the court's initiative on the grounds that dissemination of evidence or argument presented at the hearing may interfere with an overriding interest, including disclosure of inadmissible evidence and the right to a fair trial.

Subd. 2. Notice to Adverse Counsel. If any party has evidence that may be subject to a closure order, the party must advise opposing counsel and request a closed meeting with counsel and the court.

Subd. 3. Meeting in Closed Court and Notice of Hearing. In closed court, the court must review the evidence that could be the subject of a restrictive order. If the court determines restriction may be appropriate, the court must schedule a hearing on the potential restrictive order. A hearing notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard on whether the claimed overriding interest justifies closure.

Subd. 4. Hearing. At the hearing, the court must advise all present that evidence exists that may be the subject of a closure order. The court must allow the public, including reporters, to suggest alternatives to a restrictive order.

The court must consider alternatives to closure. The court may order closure of the pretrial hearing only if it finds a substantial likelihood exists that conducting the hearing in open court would interfere with an overriding interest. Any closure must be no broader than necessary to protect the overriding interest.

Subd. 5. Findings. Any order excluding the public from a pretrial hearing must be issued in writing and state the reasons for closure. The order must address any possible alternatives to closure and explain why the alternatives are inadequate. Any matter relevant to the court's decision that does not present the risk of revealing inadmissible, prejudicial information must be decided on the record in open court.

Subd. 6. Records. If the court closes all or part of a pretrial hearing, a complete record of the nonpublic proceedings must be made. On request, the record must be transcribed and filed at public expense. The record must be publicly available after trial or disposition of the case. The court may redact or substitute names in the record to protect innocent persons.

Subd. 7. Appellate Review. Anyone represented at the hearing or aggrieved by an order granting or denying public access may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

The Court of Appeals must determine whether the party who moved for public exclusion met the burden of justifying exclusion under this rule. The Court of Appeals may reverse, affirm, or modify the district court's order.

25.02 Continuance or Change of Venue

This rule governs a motion for continuance or change of venue because of prejudicial publicity.

Subd. 1. How Obtained. A continuance or change of venue may be granted on motion of any party or on the court's initiative.

Subd. 2. Methods of Proof. The following are permissible methods of proof of grounds for a motion for change of venue due to pretrial publicity:

(a) Testimony, affidavits, or written statements signed under penalty of perjury pursuant to Minnesota Statutes, section 358.116, from individuals in the community;

(b) Qualified public opinion surveys; or

(c) Other material having probative value.

Testimony, affidavits, or written statements from individuals in the community must not be required as a condition for granting the motion.

Subd. 3. Standards for Granting the Motion. A motion for continuance or change of venue must be granted whenever potentially prejudicial material creates a reasonable likelihood that a fair trial cannot be had. Actual prejudice need not be shown.

Subd. 4. Time of Disposition. If a motion for continuance or change of venue is made before the jury is sworn, the motion must be determined before the jury is sworn. A motion for reconsideration of a prior denial may be granted even after a jury has been sworn.

Subd. 5. Limitations; Waiver. The court may grant more than one change of venue. The waiver of a jury or the failure to exercise all available peremptory challenges does not constitute a waiver of the right to a continuance or change of venue if a motion has been timely made.

(Amended effective July 1, 2015)

25.03 Restrictive Orders

Subd. 1. Scope. Except as provided in Rules 25.01, 26.03, subd. 6, and 33.04, this rule governs the issuance of any court order restricting public access to public records relating to a criminal proceeding.

Subd. 2. Motion and Notice.

(a) A restrictive order may be issued only on motion and after notice and hearing.

(b) Notice of the hearing must be given in the time and manner and to interested persons, including the news media, as the court may direct. The notice must be issued publicly at least 24 hours before the hearing and must afford the public and the news media an opportunity to be heard.

Subd. 3. Hearing.

(a) At the hearing, the moving party has the burden of establishing a factual basis for the issuance of the order under the conditions specified in subdivision 4.

(b) The public and news media have a right to be represented and to present evidence and arguments in support of or in opposition to the motion, and to suggest any alternatives to the restrictive order.

(c) A verbatim record of the hearing must be made.

Subd. 4. Grounds for Restrictive Order. The court may issue a restrictive order under this rule only if the court concludes that:

(a) Access to public records will present a substantial likelihood of interfering with the fair and impartial administration of justice.

(b) All reasonable alternatives to a restrictive order are inadequate.

A restrictive order must be no broader than necessary to protect against the potential interference with the fair and impartial administration of justice.

Subd. 5. Findings of Fact. The Court must make written findings of the facts and reasons supporting the conclusions on which an order granting or denying the motion is based. If a restrictive order is granted, the order must address possible alternatives to the restrictive order and explain why the alternatives are inadequate.

Subd. 6. Appellate Review.

(a) Anyone aggrieved by an order granting or denying a restrictive order may petition the Court of Appeals for review. This is the exclusive method for obtaining review.

(b) The Court of Appeals must determine whether the moving party met the burden of justifying the restrictive order under the conditions specified in subdivision 3. The Court of Appeals may reverse, affirm, or modify the district court's order.

Comment - Rule 25

The Rules of Public Access to Records of the Judicial Branch generally govern access to case records of all judicial courts. However, Rule 4, subd. 1(d) and Rule 4, subd. 2 of those rules provide that the Rules of Criminal Procedure govern what criminal case records are inaccessible to the public and the procedure for restraining access to those records.

Rule 25.01 (Motion to Exclude Public) setting forth the procedure and standard for excluding the public from pretrial hearings is based on Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn. 1983). For a defendant an overriding interest includes interference with the defendant's right to a fair trial by reason of the dissemination of evidence or argument presented at the hearing. As to the sufficiency of the alleged overriding interest to justify closure of the hearing see Waller v. Georgia, 467 U.S. 39 (1984) (Closure of suppression hearing over the defendant's objection), Press-Enterprise Co. v. Superior Court, 464 U.S. 501 (1984) (Closure of voir dire proceedings), and Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982) (Closure of courtroom when the minor victim of a sex offense testifies). This determination would include the situation in which the news media agreed not to disseminate these matters until completion of the trial. The provision for appellate review is intended to give the defendant, as well as any person aggrieved, standing to seek immediate review of the court's ruling on exclusion.

This rule does not interfere with the power of the court in any pretrial hearing to caution those present that dissemination of certain information by means of public communication may jeopardize the right to a fair trial by an impartial jury.

The procedure in Rule 25.03 is based upon Minneapolis Star and Tribune Co. v. Kammeyer, 341 N.W.2d 550 (Minn. 1983) and Northwest Publications, Inc. v. Anderson, 259 N.W.2d 254 (Minn. 1977). Rule 25.03 governs only the restriction of access to public records concerning a criminal case. It does not authorize the court under any circumstances to prohibit the news media from broadcasting or publishing any information in their possession relating to a criminal case.

Possible alternatives to a restrictive order indicated in Rule 25.03, subd. 3(b) are the following:

(1) a continuance or change of venue under Rule 25.02;

- (2) sequestration of jurors on voir dire under Rule 26.02, subd. 4(2)(b);*
- (3) regulation of use of the courtroom under Rule 26.03, subd. 3;*
- (4) sequestration of jury under Rule 26.03, subd. 5(1);*
- (5) exclusion of the public from hearings or arguments outside of the presence of the jury under Rule 26.03, subd. 6;*
- (6) cautioning or ordering parties, witnesses, jurors, and judicial employees and sequestration of witnesses under Rule 26.03, subs. 7 and 8;*
- (7) admonitions to jurors about exposure to prejudicial material under Rule 26.03, subd. 9.*