

**Proposed Rule of Criminal Procedure
Regarding Closure of Proceedings or Sealing of Judicial Records
in Criminal (“CR”) Cases**

Colo. R. Crim. Proc. ____:

(a) Subject to the limitations set forth below, in any criminal matter, the public presumptively should have access to all judicial proceedings, related court documents and exhibits, and any record made thereof not otherwise required to remain confidential. A court may impose reasonable time, place and manner limitations on public access to judicial records.

(b) A court may issue a closure order, denying access to the public to specified portions of a judicial proceeding, or to a related document or exhibit in the court file, only after:

- (i) conducting a hearing after reasonable notice and an opportunity to be heard on the proposed order has been provided to the parties and to the public; and
- (ii) making specific written findings, on the record, that:
 - (A) public access would create a substantial probability of harm to the fairness of the trial or other overriding interest which substantially outweighs the defendant's or the public's interest in public access;
 - (B) the proposed closure order will effectively prevent or substantially lessen the potential harm; and
 - (C) there is no less restrictive alternative means that is reasonably available to prevent that harm, including any of the measures listed below, or permitting access to one or more representatives of the public:
 - (1) ordering a continuance;
 - (2) conducting voir dire as to pretrial publicity;
 - (3) providing clear cautionary instructions to the jury from the outset of jury selection;
 - (4) providing clear cautionary instructions to court personnel, parties, lawyers, and witnesses;
 - (5) providing lawyers with additional peremptory challenges;
 - (6) impanelling additional alternate jurors;
 - (7) importing jurors from another district or locality;

- (8) ordering a severance;
- (9) impanelling an anonymous jury;
- (10) sequestering the jury; and
- (11) ordering a change of venue.

(c) In determining whether a closure order should issue, the court may accept the items for which suppression or closure is being requested under seal, *in camera* or in any other manner designed to permit a party to make a *prima facie* showing without public disclosure of that matter. The motion seeking to close access to those items must itself, however, be open to public inspection unless the requirements of subsection (b) are met as to portions of the motion papers.

(d) If the court issues a closure or suppression order, the court should consider imposing a time limit on the duration of that order and requiring the party that sought the order to report back to the court within a specified time period as to whether continued closure or suppression is justified pursuant to the requirements set forth in subsection (b). If those requirements are no longer met, the documents or suppressed transcripts of any closed proceeding should be unsuppressed forthwith.