

## CLOSING COURT PROCEEDINGS

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**I. Presumption of Openness.** Generally court proceedings must be open to the public, including the news media, unless there is an overriding reason for closing the courtroom.

**II. Closing Criminal Proceedings.** Both the First and Sixth Amendments require criminal proceedings to be open.

**A. Public's Right.** The public has a First Amendment right to attend criminal trials, even if the prosecution and defense wish to close the proceeding. *Richmond Newspapers, Inc., v. Virginia*, 448 U.S. 555 (1980).

The First Amendment right also applies to jury *voir dire*. *Press-Enterprise Co. v. Superior Court of California (Press-Enterprise I)*, 464 U.S. 501 (1984).

The right also applies to preliminary hearings. *Press-Enterprise Co. v. Superior Court for the County of Riverside (Press-Enterprise II)*, 478 U.S. 1 (1986).

**B. Defendant's Right.** The defendant has a right to an open proceeding. The Sixth Amendment provides that in a criminal prosecution "the accused shall enjoy the right to a speedy and public trial."

The Sixth Amendment right extends to a suppression hearing. *Waller v. Georgia*, 467 U.S. 39 (1984).

The right also applies to jury *voir dire*. *Presley v. Georgia*, 558 U.S. 209 (2010).

**C. Standard.** A criminal proceeding may not be closed unless doing so is necessary (a) to serve an overriding governmental interest (such as protecting witnesses, preserving a defendant's right to a fair trial, or avoiding public disclosure of sensitive information); (b) there is no less restrictive means of protecting that interest; and (c) the scope and duration of the closure is kept as narrow as possible. The court must make findings sufficient to support the decision to close the court. *Waller v. Georgia, supra*; *Globe Newspaper Co. v. Superior Court for Norfolk County*, 457 U.S. 596 (1982).

In *State v. Rollins*, \_\_\_ NC App \_\_\_, 729 S.E.2d 73 (2012), the court held that the *Waller v. Georgia* standards apply to the trial court's exclusion of spectators

from the courtroom during the testimony of a rape or sex offense victim. See further discussion below in the section on “Excluding individuals.”

- III. **Closing Civil Proceedings.** Although the United States Supreme Court has not addressed whether there is a First Amendment right of public access to civil proceedings, the North Carolina Supreme Court has recognized a qualified right of public access under Art. I, § 18 of the NC Constitution (“All courts shall be open . . .”). *Virmani v. Presbyterian Health Services Corp.*, 350 N.C. 449 (1999).

The qualified right of public access may be overridden by a compelling public interest, but the court first must consider less drastic alternatives. *Virmani*.

An agreement by the parties to maintain confidentiality in any proceeding against each other does not bind the court and does not by itself establish a compelling reason for closing the court proceeding. *France v. France*, 209 N.C. App. 406 (2011).

IV. **Excluding Individuals.**

- A. **Standard.** Courts in other jurisdictions disagree over whether the standard for excluding individuals from the courtroom is the same as for closing the courtroom altogether. Some courts say that the same “overriding interest” standard (see the discussion above) applies to both situations; others say there need be only a “substantial reason” for excluding individuals. North Carolina appellate courts have not addressed the issue except in the application of G.S. 15-166 regarding exclusion of spectators in rape and sex offense cases (see below).

The standard for excluding spectators from the courtroom during the testimony of a rape or sex offense victim under G.S. 15-166 is the same as for closing the courtroom, i.e., there must be an overriding governmental interest for doing so, the exclusion must be the least restrictive means of protecting that interest, and the exclusion must be kept as narrow as possible. *State v. Jenkins*, 115 N.C. App. 520, *temp stay allowed*, 336 N.C. 784, *rev denied*, 337 N.C. 804 (1994); *Bell v. Jarvis*, 236 F.3d 149 (4th Cir. 2000). Also see *State v. Burney*, 302 N.C. 529 (1981); *State v. Register*, 206 N.C. App. 629 (2010) (not abuse of discretion to exclude family members of defendant and family members of child victim other than parents, based on court’s concern for outbursts and hostile atmosphere, while allowing a high school class to remain during victim’s testimony).

In *State v. Rollins*, \_\_\_ NC App \_\_\_, 729 S.E.2d 73 (2012), the court held that the *Waller v. Georgia* standards apply to the trial court’s exclusion of spectators from the courtroom during the testimony of a rape or sex offense victim. The trial court erred in failing to make findings of fact supporting the exclusion of witnesses, but because the closing was limited to that one portion of the trial the Court of Appeals remanded the case rather than ordering a new trial. On remand, the trial court was to enter findings and determine whether closure was warranted, subject to further appeal by the defendant.

- B. **Disruptive Spectators.** Courts have inherent authority to maintain proper order and decorum, including exclusion of disruptive individuals. G.S. 15A-1033 specifically authorizes the exclusion of a disruptive person from a criminal trial, and

G.S. 15A-1035 declares that the court has inherent authority to maintain order in addition to the specific statutory authority.

For an example of exclusion of disruptive spectators see *State v. Dean*, 196 N.C. App. 180 (2009), involving removal of gang members from a murder trial.

North Carolina appellate cases have not directly addressed the constitutionality of removal of spectators, but it would seem obvious that there is an overriding governmental interest in removing disruptive spectators.

- C. Failure to Control Spectators.** A defendant might argue that the due process right to a fair trial has been denied when the court fails to exclude spectators who attempt to influence jurors through demonstrative acts or dress. See *State v. Braxton*, 344 N.C. 702 (1996) (no error in failing to remove spectators wearing buttons with the victim's photograph); and *State v. Maness*, 363 N.C. 261 (2009) (police officers in uniform momentarily standing near jurors did not create mistrial in murder case with police officer victim).
- V. Statutes on Closing Proceedings.** A number of statutes specify whether particular proceedings are to be open or closed. A number of the statutes concern juvenile matters heard in district court. Statutes applicable to superior court include:
- G.S. 8C1, Rule 412(d) — An in camera hearing is required on admissibility of evidence of the sexual behavior of a complainant in a rape or sex offense case.
  - G.S. 15-166 — The courtroom may be closed during the testimony of rape or sex offense victim (see the discussion above).
  - G.S. 15A-623(e) — Grand jury proceedings are secret.
  - G.S. 15A-1033 — The court may remove a person disrupting a criminal trial.
  - G.S. 15A-1034 — Access to the courtroom may be limited in a criminal case to ensure order and the safety of those present.
  - G.S. 66-156 — An in camera hearing may be held to protect trade secrets in litigation over misappropriation of trade secrets.
- VI. Suing for Access to Civil Proceeding.** G.S. 1-72.1 allows any person claiming a right of access to a civil proceeding to file a motion for that purpose without having to intervene in the case. There is no comparable statute for criminal cases.